

No. 3086

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United States
Circuit Court of Appeals
For the Ninth Circuit.

EDWARD H. PHELAN,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.

FILED

DEC 5 - 1917

F. D. MONCKTON,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff in Error:

ISIDORE B. DOCKWEILER, Esq., 1035 I. N.

Van Nuys Building, Los Angeles, California.

For Defendant in Error:

ROBERT O'CONNOR, Esq., United States

Attorney; CLYDE R. MOODY, Assistant

United States Attorney, Fourth Floor Federal

Building, Los Angeles, California.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

Citation of Writ of Error.

United States of America—ss.

To the United States of America, and to the United
States District Attorney for the Southern District
of California, Southern Division. Greeting:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals,
to be held at the city of San Francisco in the state of
California, on the 30th day of November, A. D. 1917,
pursuant to a writ of error, filed in the clerk's office
of the United States District Court of the Southern
District of California, Southern Division, in that cer-
tain action No. 1299 Criminal, wherein Edward H.
Phelan is plaintiff in error, and you are the defendant
in error, to show cause, if any there be, why the
judgment and sentence given, made and rendered
against the said plaintiff in error, as in the said
writ of error mentioned, should not be corrected, and
speedy justice should not be done to the plaintiff.

Witness the Honorable Benjamin F. Bledsoe, United
States district judge for the Southern District of
California, Southern Division, this 2nd day of No-
vember, 1917, and of the independence of the United
States, the one hundred and forty-first.

BENJAMIN F. BLEDSOE,
United States District Judge.

Receipt of a copy of the within citation is hereby admitted this 2nd day of November, 1917.

ROBERT O'CONNOR,
United States District Attorney for the Southern
District of Cal.

By GORDON LAWSON,
Assistant District Attorney.

[Endorsed]: Original. No. 1299 Criminal. Dept.
.... In the District Court for the Southern District of
California, Southern Division. United States of Amer-
ica, plaintiff, vs. Edward H. Phelan, defendant. Cita-
tion on Writ of Error. Filed Nov. 2, 1917. Wm. N.
Van Dyke, clerk, by Chas. N. Williams, deputy clerk.
Isidore B. Dockweiler, suit 502 Douglas Bldg., office
Tel., Main 1320 (Sunset), Home 1320, Los Angeles,
Cal., attorney for defendant. Removed to 1035 I. N.
Van Nuys Bldg.

United States Circuit Court of Appeals, Ninth Circuit.

**Writ of Error From United States Circuit Court of
Appeals to United States District Court.**

United States of America—ss.

The President of the United States of America, to the
Honorable, the Judges of the United States Dis-
trict Court in and for the Southern District of
California, Southern Division, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court, before you or some of you,
between the United States of America, as plaintiff,
and Edward H. Phelan, as defendant, a manifest error

hath happened, to the great damage of the said Edward H. Phelan, defendant, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do hereby command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco in the state of California, on the 30th day of November, A. D. 1917, next, in the said United States Circuit Court of Appeals to be there and then held, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, chief justice of the United States, this 2nd day of November, A. D. 1917, and of the independence of the United States the one hundred and forty-first.

(Seal)

WM. M. VAN DYKE,

Clerk of the United States District Court in and for
the Southern District of California, Southern
Division.

By Chas. N. Williams,
Deputy Clerk.

The above writ of error is hereby allowed.

BLEDSON,
District Judge.

I hereby certify that a copy of the within Writ of Error was on the 2nd day of November, 1917, lodged in the clerk's office of the said United States for the Southern District of California, Southern Division, for the said defendant in error.

(Seal) WM. M. VAN DYKE,
Clerk of the United States District Court, Southern
District of California, Southern Division.

By Chas. N. Williams,
Deputy Clerk.

Service of the within Writ of Error is hereby admitted, this 2nd day of November, A. D. 1917.

ROBERT O'CONNOR,
United States District Attorney.

By GORDON LAWSON,
Assistant District Attorney.

[Endorsed]: Original. No. 1299 Criminal, Dept. In the United States Circuit Court of Appeals, Ninth Circuit. United States of America, plaintiff, vs. Edward H. Phelan, defendant. Writ of Error from United States Circuit Court of Appeals to United States District Court. Filed Nov. 2, 1917. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Isidore B. Dockweiler, suite 502 Douglas Bldg., office Tel., main 1320 (Sunset), Home 1320, Los Angeles, Cal., attorney for defendant. Removed to 1035 I. N. Van Nuys Bldg.

*In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

At a stated term of said court, begun and holden at

the city of Los Angeles, county of Los Angeles, within the Southern Division of the Southern District of California, on the second Monday of July, in the year of our Lord one thousand nine hundred and seventeen.

The Grand Jurors of the United States of America, chosen, selected and sworn, within and for the division and district aforesaid, on their oaths present:

That Edward H. Phelan, on June 5, 1917, at Whittier, in said division and district, was a male person between the ages of twenty-one and thirty, to-wit, a male person who then had attained his twenty-first birthday and who did not on that day attain and had not before then attained his thirty-first birthday, and as such person was then and there required, by the proclamation of the President of the United States dated May 18, 1917, to present himself for and submit to registration, under the Act of Congress approved May 18, 1917, and entitled "an act to authorize the President to increase temporarily the military establishment of the United States," at the registration place in Los Nietos precinct, Los Angeles county, in said division and district, between 7 a. m. and 9 p. m. on said June 5, 1917, that precinct then being the precinct wherein said Edward H. Phelan then had his permanent home and actual place of legal residence, from which he was not then temporarily absent; and that said Edward H. Phelan, so then and there being such person, unlawfully did wilfully fail and refuse so then and there to present himself for registration and to submit thereto as in said act provided and in said proclamation appointed; he, the

said Edward H. Phelan, then and there not being an officer or an enlisted man of the Regular Army, of the Navy, of the Marine Corps, or of the National Guard or Naval Militia in the service of the United States, or an officer in the Reserve Corps or an enlisted man in the Enlisted Reserve Corps in active service;

Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

ALBERT SCHOONOVER,

United States Attorney.

GORDON LAWSON,

Assistant United States Attorney.

[Endorsed]: No. 1299 Crim. United States District Court, Southern District of California, Southern Division. The United States of America vs. Edward H. Phelan. Indictment Viol. Sec. 5, Act of May 18, 1917. Failure to register. A true bill, Martin C. Marsh, foreman. Filed Sep. 7, 1917. Wm. M. Van Dyke, clerk; T. F. Green, deputy. Bail \$5000.00. Albert Schoonover, U. S. Atty.

At a stated term, to-wit, the July term, A. D. 1917, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Saturday, the eighth day of September, in the year of our Lord one thousand nine hundred and seventeen:

Present:

The Honorable Benjamin F. Bledsoe, district judge.

No. 1299 Crim. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD H. PHELAN,

Defendant.

This cause coming on this day by consent for the arraignment of defendant and for the entry of his plea; Gordon Lawson, Esq., assistant U. S. attorney, appearing as counsel for the United States; defendant being present on bail, with his counsel, Isidore Dockweiler, Esq.; and defendant having been called and arraigned, having stated that his true name is Edward H. Phelan, having waived the reading of the indictment, and, on being required to plead to said indictment, defendant having pleaded not guilty as charged therein, which plea is now, by order of the court, entered herein, defendant being by the court granted leave to withdraw said plea on September 17th, 1917, if he shall be so advised; whereupon it is ordered that this cause be, and the same hereby is, continued until Monday, the 17th day of September, 1917, at 10 o'clock a. m., for the setting of the same down for trial before the court and a jury to be impanelled.

At a stated term, to-wit: the July term, A. D. 1917, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Wednesday, the seventeenth day of October, in

the year of our Lord one thousand nine hundred and seventeen:

Present:

The Honorable Oscar A. Trippet, district judge.

No. 1299 Crim., 3 D. (T)

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD H. PHELAN,

Defendant.

This cause coming on this day to be tried before the court and a jury to be impanelled; Wm. F. Palmer, Esq., and Gordon Lawson, Esq., appearing as counsel for the United States; defendant being present on bail, with his counsel, Isidore B. Dockweiler, Esq.; A. S. Custer and W. J. Clark being present as shorthand reporters of the testimony and proceedings, and acting as such; and both sides having answered ready; and the court having ordered that the trial proceed, and that a jury be impanelled herein; and the following twelve (12) petit jurors having been duly drawn, called and sworn on *voir dire*, to-wit: J. A. Bothwell, F. U. Hickok, Otis E. Tiffany, Geo. W. Andes, H. S. Harvey (who is affirmed instead of sworn), Wm. H. Mayo, John L. Slaughter, Geo. Fraser, E. B. Norman, J. A. Weldt, Geo. W. Maxon and Chas. T. Fenner, and said jurors having been examined by the court and by counsel for the Government and by counsel for defendant; and H. S. Harvey having been challenged for cause by the Government, which challenge is resisted by defendant and denied by the court; and J. A. Weldt having been challenged for cause by the Government,

which challenge is resisted by defendant and sustained by the court and the juror excused; and Lewis C. Torrance, a petit juror, having been duly drawn, called, swore on *voir dire*, examined by the court and by counsel for the Government and by counsel for defendant, and passed for cause; and the jurors now in the box having been passed for cause, and H. S. Harvey having been challenged peremptorily by the Government and excused; and J. A. Bothwell and Lewis C. Torrance having been challenged peremptorily by defendant and excused; and the remaining nine jurors having been accepted by counsel for the Government and by counsel for defendant and duly sworn as jurors to try this cause; and, in place of the three jurors excused on peremptory challenges, H. A. Bankson, Michael Duffey and Wing H. Fillmore, petit jurors, having been duly drawn, called, sworn on *voir dire*, examined by the court and by counsel for the Government and by counsel for defendant and passed for cause; and Wing H. Fillmore having been challenged peremptorily by defendant and excused; and C. W. Fisher, a petit juror, having been duly drawn, called, sworn on *voir dire*, examined by the court and by counsel for the Government and by counsel for defendant and passed for cause; and jurors Bankson, Duffey and Fisher having been accepted by counsel for the Government and by counsel for defendant and duly sworn as jurors to try this cause; and the impanellment of the jury being completed, said jury as so impanelled and sworn consisting of the following named jurors, to-wit:

JURY.

- | | |
|--------------------|----------------------|
| 1. Michael Duffey | 7. John L. Slaughter |
| 2. F. U. Hickok | 8. Geo. Fraser |
| 3. Otis E. Tiffany | 9. E. B. Norman |
| 4. Geo. W. Andes | 10. C. W. Fisher |
| 5. H. A. Bankson | 11. Geo. W. Maxon |
| 6. Wm. H. Mayo | 12. Chas. T. Fenner |

and the court having admonished the jurors that, during the progress of this trial, they are not to permit other persons to speak to them, nor themselves speak to other persons, about this case, or anything connected with this case, and that, until said case is given them under the instructions of the court, they are not to speak to each other about this case, or anything therewith connected; and thereupon, at the hour of 11:23 o'clock a. m., court having taken a recess for 9 minutes; and now, at the hour of 11:32 o'clock a. m., court having reconvened; and defendant, counsel and shorthand reporters being present as before; and all of the jurors being present in court; and the clerk having read the indictment to the jury and announced to the jury defendant's plea of not guilty, and Gordon Lawson, Esq., assistant U. S. attorney, having made a statement to the jury as to what the Government expects to prove; and George G. Jeffers having been called and sworn as a witness on behalf of the United States, and having given his testimony; and the court having given the jury the usual admonition; it is, at the hour of 12 o'clock m., ordered that this cause be, and the same hereby is continued for further trial

until the hour of 2 o'clock p. m., of this day, until which time the jurors are excused.

* * * * *

No. 1299 Crim., S. D. (T)

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD H. PHELAN,

Defendant.

This cause coming on at this time to be further tried before the court and a jury heretofore duly impanelled herein; Wm. F. Palmer, Esq., and Gordon Lawson, Esq., assistant U. S. attorneys, appearing as counsel for the United States; defendant being present on bail, with his counsel, Isidore B. Dockweiler, Esq.; A. S. Custer and W. J. Clark being present as shorthand reporters of the testimony and proceedings, and acting as such, and all of the jurors being present in court; and the question of admissibility of certain evidence having been argued, on behalf of the Government, by Wm. F. Palmer, Esq., and Gordon Lawson, Esq., assistant U. S. attorneys, of counsel for the United States, upon which question the court does not at this time rule; and Wm. L. Price, Father Patrick Harnett, Mrs. Mary Isabelle and Rexie Dale having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and the court having given the jury the usual admonition; and thereupon, at the hour of 3:36 o'clock p. m., court having taken a recess for 8 minutes; and now, at the hour of 4:44 o'clock p. m., court having reconvened; and defendant, counsel and shorthand reporter being

present as before; and all of the jurors being present in court; and Haribert J. Rechsteiner having been called and sworn as a witness on behalf of the United States and having testified; and, in connection with the testimony of said witness the Government having offered an exhibit, which is admitted in evidence in its behalf, to-wit: Govt. Ex. 1, application of defendant to become a member of the Knights of Columbus; and Susie Davin having been called and sworn as a witness on behalf of the United States, and having given her testimony; and the court having given the jurors the usual admonition; it is, at the hour of 4:22 o'clock p. m., ordered that this cause be, and the same hereby is continued for further trial until Thursday, the 18th day of October, 1917, at 10 o'clock a. m., until which time the jurors are excused.

At a stated term, to-wit: the July term, A. D. 1917, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Thursday, the eighteenth day of October, in the year of our Lord one thousand nine hundred and seventeen:

Present:

The Honorable Oscar A. Trippet, district judge.

No. 1299 Crim. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD H. PHELAN,

Defendant.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Gordon Lawson, Esq., and Wm. F. Palmer, Esq., assistant U. S. attorneys, appearing as counsel for the United States; defendant being present on bail, with his counsel, Isidore B. Dockweiler, Esq.; A. S. Custer and W. J. Clark being present as shorthand reporters of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Susie Davin, a witness on behalf of the United States, having again taken the stand for further examination, and having given her testimony; and the Government having rested; and Edward H. Phelan, the defendant, having been called and sworn as a witness in his own behalf, and having given his testimony; and the court having given the jury the usual admonition; and thereupon, at the hour of 11:17 o'clock a. m., court having taken a recess for 10 minutes; and now, at the hour of 11:27 o'clock a. m., court having reconvened; and defendant, counsel and shorthand reporters being present as before; and Mary Phelan, having been called and sworn as a witness on behalf of defendant, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered an exhibit, which is admitted in evidence in its behalf, to-wit: Govt. Ex. 2, petition for homestead in Probate Court; and the court having given the jury the usual admonition; thereupon, at the hour of 11:58 o'clock a. m., it is ordered that this cause be and the same hereby is continued for further trial until the hour

of 2 o'clock p. m. of this day, until which time the jurors are excused.

* * * * *

No. 1299 Crim. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD H. PHELAN,

Defendant.

This cause coming on at this time to be further tried before the court and a jury heretofore duly impanelled herein; Gordon Lawson, Esq., and Wm. F. Palmer, Esq., assistant U. S. attorneys, appearing as counsel for the United States; defendant being present on bail, with his counsel, Isidore B. Dockweiler, Esq.; A. S. Custer and W. J. Clark being present as shorthand reporters of the testimony and proceedings, and acting as such; and all of the jurors being present in court; and Mary Phelan, a witness on behalf of the defendant, having again taken the stand for further examination, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered two exhibits, which are admitted in evidence in its behalf, to-wit: U. S. Ex. 3, photostat copy of deposition of Mary Phelan; and U. S. Ex. 4, photostat copy of declaration of Mary Phelan for pension; and the court having given the jury the usual admonition and thereupon, at the hour of 3:09 o'clock p. m., court having taken a recess for 6 minutes; and now, at the hour of 3:15 o'clock p. m., court having reconvened; and defendant, counsel and shorthand reporters being present as before; and all of the jurors

being present in court; and Claya Taylor having been called and sworn as a witness on behalf of the United States, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered two exhibits which are admitted in evidence in its behalf, to-wit: U. S. Ex. 5, telegram, O'Connor, U. S. Atty. to Atty. General; and U. S. Ex. 6, letter of Oct. 10, 1917, Bureau of Investigation to O'Connor; and Mary Phelan, a witness on behalf of defendant, having been recalled by the Government for further examination, and having given her testimony; and Maria Jesus de Martinez having been called and sworn as a witness on behalf of defendant, and having given her testimony, through R. J. Dominguez, court interpreter of the Spanish and English languages; and H. E. Collins, T. L. Gooch, Max Schwed, Mrs. Harriet W. Strong, A. H. Gregg, Geo. F. Prince, C. Sorenson and O. M. Souden having respectively been called and sworn as witnesses on behalf of defendant, and having given their testimony; and defendant having rested; and this cause having been argued to the jury, on behalf of the Government, by Wm. F. Palmer, Esq., assistant U. S. attorney, of counsel for the United States; and the court having given the jury the usual admonition; thereupon, at the hour of 4:29 o'clock p. m., it is ordered that this cause be, and the same hereby is continued for further trial until Friday, the 19th day of October, 1917, at 10 o'clock a. m., until which time the jurors are excused.

At a stated term, to-wit: the July term, A. D. 1917,
of the District Court of the United States of

America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Friday, the nineteenth day of October, in the year of our Lord one thousand nine hundred and seventeen:

Present:

The Honorable Oscar A. Trippet, district judge.

No. 1299 Crim. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD H. PHELAN,

Defendant.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Gordon Lawson, Esq., and Wm. F. Palmer, Esq., appearing as counsel for the United States; defendant being present on bail, with his counsel, Isidore B. Dockweiler, Esq.; A. S. Custer being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and this cause having been further argued to the jury, on behalf of the defendant, by Isidore B. Dockweiler, Esq., of counsel for defendant; and the court having given the jury the usual admonition; and thereupon, at the hour of 11:15 o'clock a. m., court having taken recess for 5 minutes; and now at the hour of 11:20 o'clock a. m., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and this cause hav-

ing been further argued to the jury, on behalf of the Government, in reply, by Gordon Lawson, Esq., assistant U. S. attorney, of counsel for the United States; and the court having read to the jury its written instructions; it is, on motion of defendant by his counsel, ordered that the instructions requested by defendant at the former trial of this cause be, and they hereby are deemed to have been, requested by the defendant at this trial of said cause; now, on motion of defendant and by direction of the court, it is ordered that exceptions be, and they hereby noted to the refusal of the court to give the instructions requested by defendant, and also to certain of the instructions given by the court; and Josiah W. Bell having been duly sworn to take charge of the jury; it is ordered that the U. S. marshal for this district take said jurors to some suitable place for their dinner, said dinner, for the jurors and accompanying officers, to be at the expense of the United States, and that thereafter said U. S. marshal return the jurors to their room to consider of their verdict; and thereupon, at the hour of 12:35 o'clock p. m., the jury having retired, in charge of said sworn officer, to consider of their verdict; and now, at the hour of 2:48 o'clock p. m., the jury having come into court; defendant and counsel being present as before; I. Benjamin, one of the official shorthand reporters of this court, being present and acting as such; and all of the jurors being present in court in charge of said sworn officer; and the jurors having been asked if they have agreed upon a verdict, and having, through their foreman, replied that they have so agreed and having been required to present their

verdict; and said verdict having been read by the clerk and the jurors having said that it is their verdict; now, by direction of the court, said verdict is filed and recorded by the clerk, said verdict as so recorded being as follows, to-wit:

"In the District Court of the United States, in and for the Southern District of California, Southern Division. The United States of America, plaintiffs, vs. Edward H. Phelan, defendant. No. 1299 Crim. We, the jury in the above entitled cause, find the defendant Edward H. Phelan guilty as charged in the indictment. Los Angeles, California, October 19th, 1917. John L. Slaughter, foreman."

Thereupon it is by the court ordered that said jurors be, and they hereby are excused until Tuesday, the 23rd day of October, 1917, at 10 o'clock a. m.; and it is further ordered that this cause be, and the same hereby is, continued until Monday, the 22nd day of October, 1917, at 2 o'clock p. m., for the sentence of defendant, said defendant in the meantime to remain at large on his present bail bond.

Instructions Given.

The offense, gentlemen with which this defendant is charged, is that of wilfully failing and refusing to submit himself for registration under the act providing for the temporary increase of the military forces of the United States Government, in that the said Edward Phelan, on June 5, 1917, within this district, being a male person between the ages of twenty-one and thirty-one, to-wit, who had attained his twenty-first

birthday, but who had not, on that day and had not before then attained his thirty-first birthday, and as such person was then and there required by the proclamation of the President of the United States to present and submit himself for registration within the hours provided by law, did then and there unlawfully and wilfully fail and refuse to present himself for registration, and to submit to registration as in such act and in said proclamation provided, he then and there not being an officer or enlisted man of the regular army, and not being in anywise engaged in military service.

This indictment on file, and which I have just read, is, and is to be considered as, of course, a mere charge or accusation against the defendant, and is not, of itself, any evidence of the defendant's guilt, and no juror in this case should permit himself to be, to any extent, influenced against the defendant because or on account of such indictment on file. It is the duty of the jury to decide whether the defendant is guilty or not guilty of the offense charged after a consideration of all of the evidence submitted in the case. It is not for you to consider the penalty prescribed for the punishment of an offense at all. If you are aware of the penalty prescribed by law, it is your duty to disregard that knowledge; in other words, your sole duty, gentlemen, is to decide whether the defendant is guilty or not guilty of what he is charged with. The question of punishment is left wholly to the court, except as the law circumscribes its power.

You are instructed, gentlemen, that you are the exclusive judges of the credibility of the witnesses

whose testimony has been admitted in evidence herein, and of the effect and value of such evidence. Your power in this regard, however, is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

It is the province of the court under the law to state to you the rules of law applicable to the case, and you, in your deliberations, will be guided by those rules so stated.

It is your duty, unaided by the court, to pass upon and decide all questions of fact.

Every witness is presumed to speak the truth, but this presumption may be repelled by the manner in which he or she testifies, by his or her appearance upon the stand, by the character of his or her testimony, or by the giving of false or perjured testimony by him or her, or by evidence affecting his or her character for truth, honesty or integrity, or by his or her motives, interest or bias, or by contradictory evidence.

A witness may be impeached by the party against whom he or she was called; by contradictory evidence, by evidence that he or she has made, at other times, statements inconsistent with his or her present testimony, and by evidence that his or her general reputation for truth, honesty and integrity is bad.

If you believe that any witness has been impeached, or that the presumption of truthfulness attaching to the testimony of such witness has been repelled, then you are to give the testimony of such witness such credibility, if any, as you may think it entitled to. You are not bound to decide in conformity with the declarations of any number of witnesses which do not

produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds.

The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of this privilege and his testimony is to be treated like the testimony of any other witness,—that is, it is for you to say, remembering his testimony, his cross-examination, his demeanor and attitude on the witness stand, and during the trial, and everything else in the case, whether or not he told the truth. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far, or to what extent, if at all, it is worthy of credit.

If any witnesses are shown knowingly to have testified falsely on this trial, touching material matters here involved, the jury are at liberty to reject the whole or any part of their testimony.

In civil cases, gentlemen, the affirmative of the issue must be proved, and when that is contradicted, the decision must be in accordance with the preponderance of the evidence; but, in criminal cases, guilt must be established beyond a reasonable doubt, and the burden of establishing such guilt rests upon the Government. The law does not require of a defendant that he prove himself innocent, but the law requires the Government to prove the defendant guilty in the manner and form as charged in the indictment, beyond reasonable doubt, and unless the Government has done so, the jury should acquit.

Before a verdict of guilty can be rendered, each

member of the jury must be able to say, in answer to his own individual conscience, that he, in his mind, has arrived at a fixed opinion, based upon the law and the evidence in the case, and upon nothing else, that the defendant here is guilty.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime; one is direct or positive testimony of an eye-witness to the commission of the crime; the other is testimony in proof of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, and which is known as circumstantial evidence. Such evidence may consist of admissions by the defendant plans laid for the commission of the crime, in short, any acts, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the crime. Where the evidence is entirely circumstantial, yet is not only consistent with the guilt of the defendant, but inconsistent with any other rational conclusion, the law makes it the duty of the jury to convict.

The good character of a person accused of crime, when proven as a fact in the case, is a circumstance tending, in a greater or less degree, to establish his innocence. It must be considered in connection with all the other facts and circumstances of the case, and may be sufficient in itself to raise a reasonable doubt as to the defendant's guilt; but if, after a full consideration of the evidence adduced, the jury believes the defendant to be guilty of the crime charged, they

should so find, notwithstanding proof of good character.

The law presumes a defendant charged with crime innocent until proven guilty, beyond a reasonable doubt. If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you are to do so, and, in that case, find the defendant not guilty.

You are further instructed that you cannot find the defendant guilty unless, from all the evidence, you believe him guilty, beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason and which is reasonable in view of all the evidence, and if, after an impartial comparison and consideration of all the evidence, or from want of sufficient evidence on behalf of the Government to convince you of the truth of the charge, you can candidly say you are not satisfied of the defendant's guilt, then you have a reasonable doubt, but if, after such impartial comparison and consideration of all the evidence you can truthfully say you have an abiding conviction of the defendant's guilt such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you have no reasonable doubt. By such reasonable doubt you are not to understand that all doubt is to be excluded, for it is impossible in the determination of these questions to be absolutely certain. You are required to decide the question submitted to you upon the strong probabilities of the case, and in order to justify a conviction the probabilities must be so strong as not to exclude all doubt or

possibility of error, but as to exclude reasonable doubt.

When, weighing all the evidence, you have an abiding conviction and believe that the defendant is guilty, it is your duty to convict. No sympathy justifies you in seeking for doubt by any strained or unreasonable construction or interpretation of evidence or facts. The law of the United States, as declared by the Congress thereof, gentlemen, among other things, in the Act of Congress approved March 18, 1917, provided for the tempoary increase of the military forces of the United States occasioned because of the war with Germany,—

“That all male persons between the ages of twenty-one and thirty, both inclusive, shall be subject to registration in accordance with regulations to be prescribed by the President, and upon a proclamation by the President or other public notice given by him or by his direction stating the time and place of such registration, it shall be the duty of all persons of the designated ages, except officers and enlisted men of the Regular Army, the Navy, and the National Guard and Naval Militia, within the boundaries of the United States, to present themselves for and submit to registration under the provisions of this act, and every such person shall be deemed to have notice of the requirements of this act upon the publication of said proclamation or other notice, as aforesaid, given by the President or by his direction, and any person who shall wilfully fail or refuse to present himself for registration or to submit thereto, as herein provided, shall be guilty of a misdemeanor.”

The question in this case, gentlemen, is, primarily, what was the age of the defendant Phelan on Registration Day, June 5, 1917? If, on that day, he had attained his thirty-first birthday, then he was not liable to that draft, and not required to present himself for registration, and should be acquitted by you. If, however, you find and believe that the defendant Phelan was not thirty-one years of age on said Registration Day, that is, if he was born subsequently to June 5, 1886, and in good faith believed that he was born subsequently to that day, and you believe that he wilfully refused to register, then you should convict him. It might be that though he was, in truth and in fact, under thirty-one, yet he, in good faith and with sufficient reason, believed himself to be over thirty-one years of age, in such event I charge you he could not be held wilfully to have neglected to register. The element of wilfulness, in addition to the mere question of age as above referred to, must be present in order to justify a conviction.

The word wilful implies an intent and purpose on the part of a person to do or not to do an act.

In this case the defendant admits that he knew that persons over twenty-one years of age—who had not attained their thirty-first birthdays,—were required to register, for he says that he took a person to the registration place for the purpose of registration. Now, if the defendant had not, in fact, reached his thirty-first birthday, and if, in fact, he knew or believed that he had not reached his thirty-first birthday, being over twenty-one years of age, the element of wilfulness would be established.

This case, gentlemen, like all cases triable in a court of justice, should be determined by you upon the evidence before you, and upon that alone, subject to the rules of law laid down for your guidance by the court, and no juror acting conscientiously, can base his verdict upon any other consideration.

In this connection, you are instructed that juries are empaneled for the purpose of agreeing upon a verdict, if they can conscientiously do so. It is true that each juror must decide the matter for himself, yet he should do so only after a consideration of the case with his fellow jurors. He should not hesitate to sacrifice his views or opinions of the case when convinced that they are erroneous, even if in so doing he defer to the views or opinions of others.

[Endorsed]: No. 1299 Crim. U. S. District Court, Southern District of California, Southern Division. United States of America vs. Edward Phelan. Instructions Given. Filed Oct. 19, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy clerk.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 1299 Crim.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD H. PHELAN,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find the defendant Edward H. Phelan,—guilty as charged in the indictment.

Los Angeles, California, October 19th, 1917.

JOHN L. SLAUGHTER,

Foreman.

[Endorsed]: No. 1299 Crim. U. S. District Court, Southern District of California, Southern Division. United States of America vs. Edward H. Phelan. Verdict. Filed Oct. 19, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy clerk.

At a stated term, to-wit: the July Term, A. D. 1917, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Monday, the 22nd day of October, in the year of our Lord one thousand nine hundred and seventeen.

Present: The Honorable Oscar A. Trippet, District Judge.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

No. 1299 Criminal, S. D.

This cause coming on this day for the sentence of defendant, Gordon Lawson, Esq., and Wm. F. Palmer, Esq., Assistant U. S. attorneys, appearing as counsel for the United States; defendant being present on bail,

with his counsel, Isidore B. Dockweiler, Esq.; and said counsel for defendant having moved the court for a continuance of this cause for sentence, and said motion for continuance having been argued, in support thereof, by Isidore B. Dockweiler, Esq., of counsel for defendant, and in opposition thereto by Wm. F. Palmer, Esq., assistant U. S. attorney, of counsel for the United States: It is by the court ordered that defendant's said motion for a continuance of this case be, and the same hereby is denied; and defendant's motion for a new trial, and an affidavit in support thereof, having been filed in open court; and said motion for a new trial having been argued, in support thereof, by Isidore B. Dockweiler, Esq., of counsel for defendant, and in opposition thereto by Gordon Lawson, Esq., and Wm. F. Palmer, Esq., assistant U. S. attorneys, of counsel for the United States, and in support thereof in reply by Isidore B. Dockweiler, Esq., of counsel for defendant: It is ordered that the defendant's said motion for a new trial herein be, and the same hereby is denied, to which ruling of the court, on motion of defendant and by direction of the court, exceptions are hereby entered on behalf of said defendant; and, on motion of Isidore B. Dockweiler, Esq., of counsel for defendant, it is ordered that said defendant be, and he hereby is granted ten (10) days within which to prepare, serve and file his proposed bill of exceptions herein; whereupon the court pronounces sentence upon said defendant for the offense of which he now stands convicted, namely, the offense of failure to register in violation of the Act of Congress of May 18th, 1917, and the proclamation of the President of the same date, as

follows, to-wit: The judgment of the court is, that the defendant, Edward H. Phelan, be imprisoned for the term of twelve (12) months in the county jail of Los Angeles county, California, and that he thereupon be registered according to the provisions of said Act of Congress; whereupon, on motion of Isidore B. Dockweiler, Esq., of counsel for defendant, it is ordered that defendant be, and hereby is, granted ten (10) days stay of execution of judgment herein, defendant in the meantime to remain at large on his present bail bond.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 1299 Crim. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD H. PHELAN,

Defendant.

I, Wm. M. Van Dyke, clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original judgment entered in the above-entitled cause; and I do further certify that the papers hereto annexed constitute the judgment roll in said cause.

Attest my hand and the seal of said District Court,
this 24th day of October, A. D. 1917.

(Seal)

WM. M. VAN DYKE,

Clerk.

By Geo. W. Fenimore,

Deputy Clerk.

[Endorsed]: No. 1299 Crim. In the District Court of the United States for the Southern District of California, Southern Division. The United States of America vs. Edward H. Phelan. Judgment Roll. Filed Oct. 24th, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy clerk. Recorded Min. book No. 28, page.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

HON. OSCAR A. TRIPPET, Judge Presiding.

No. 1299 Criminal.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

**Bill of Exceptions on Behalf of Defendant, Edward
H. Phelan.**

Be it remembered that heretofore the Grand Jury of the United States of America, in and for the Southern District of California, Southern Division, did find and return in the above entitled court its indictment against Edward H. Phelan, the above named defendant, and thereafter said defendant appeared in said court, and having duly pleaded as shown by the record therein, and the case being at issue, the same came on regularly for trial on Wednesday, the 17th day of October, 1917, before the said District Court, Hon. Oscar A. Trippet, judge presiding, the plaintiff, United States of America, being represented by Messrs. W.

Fleet Palmer and Gordon Lawson, assistants to the United States District Attorney, and the defendant, Edward H. Phelan, by Isidore B. Dockweiler, Esq. A jury having been duly empaneled and sworn, the court admonished the jury as follows:

Gentlemen of the Jury: I am about to permit you to separate, and during the separation you will not converse among yourselves or permit anybody else to address you on any subject connected with the trial. Do not form or express an opinion about the case until it is finally submitted to you. The purpose of this admonition is that the jury, and each juror, should receive all impressions concerning the case while acting as a juror; you should not have any impressions or receive any impressions from any sources whatever, unless you are acting as a juror in the case. And the jurors not summoned on this panel will be excused until the 23rd at 10 o'clock. We will take a recess, gentlemen, of five minutes."

Whereupon a recess of five minutes was taken. At the expiration of the five minutes recess, the jury being present in court, upon instructions from the court, the clerk read to the jury the indictment upon which the defendant was to be tried.

Thereupon the following proceedings were had:

Opening Statement on Behalf of Plaintiff.

By Mr. Lawson:

Your Honor, and gentlemen of the jury: The Government expects that the evidence in this case will show that the defendant was born July 13, 1886; that would bring him within the requirements of the select-

ive service act; and that on June 5th, 1917, the defendant should have registered the same as the rest of the men who were required by that act to register.

We expect that the evidence will show that in 1886, before July 13, that those people who were in a position to know, acted upon the belief,—and they had good grounds for believing—that the defendant was not in existence. And we expect that the evidence in this case will show that the defendant knew that he was born July 13, 1886, and that through all the course of his life he acted on that belief.

We expect that the evidence will show that his mother, and that his father, and that his brothers and sisters, and his friends who knew him, all believed and acted upon the belief that he was born July 13th, 1886, and that in all the various experiences of this defendant's life, wherever the question of his age came up, it was always July 13, 1886, until June 5, 1917, and then for the first time were his friends aware, or did he ever announce to anybody that he was born March 13, 1886.

And the Government expects to show that this defendant deliberately planned and contrived by holding himself out at this time as having been born on March 13, 1886, to avoid the services as required by the selective service act.

And, gentlemen of the jury, the United States, the ten million young men who registered on June 5th, will expect you to find this gentleman guilty and require of him the same service as the rest of the men who were required to register on June 5th.

The Court: Do you desire to make your opening statement now, Mr. Dockweiler?

Mr. Dockweiler: No, Your Honor.

The Court: Call your witness.

**Testimony of George T. Jeffries, for the
Government.**

George T. Jeffries, a witness called on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lawson:

My name is George T. Jeffries, and my occupation is deputy county recorder of Los Angeles county, and as such I have custody of the files and records of that office. I have with me a book containing the declarations of homestead for the year 1886. I have recorded there a declaration of homestead executed and signed by one Thomas Phelan June 4th, 1886.

Thereupon it was stipulated that Thomas Phelan was the father of the defendant, and that he is dead. Whereupon, after discussion between the court and counsel as to the admissibility of certain evidence, the court, after duly admonishing the jury, took a recess until two o'clock p. m. At two o'clock p. m. of said day, Wednesday, October 17th, 1917, the court reconvened, and the jury being present, the proceedings of the trial were resumed.

After considerable discussion between court and counsel as to the admissibility of certain evidence the witness was excused.

Testimony of William L. Price, for the Government.

William L. Price, a witness called on behalf of the Government, having been first duly sworn, testified as follows :

Direct Examination

By Mr. Lawson :

My name is William L. Price. I am a deputy county clerk in the probate department, Los Angeles county, and as such have custody of the files and records of that office. I have in my custody now the will of Thomas Phelan, which I obtained from the files and records in the county offices. I obtained the same from the files of Case No. 10936, Superior Court of the state of California, probate department, in the matter of the estate of Thomas Phelan, deceased. The same was filed January 9th, 1890.

Whereupon, after discussion between the court and counsel as to the admissibility of certain evidence, the witness was excused.

Testimony of Father Patrick Harnett, for the Government.

Father Patrick Harnett, a witness called on behalf of the Government, having been first duly sworn, testified as follows :

Direct Examination

By Mr. Lawson :

I am a priest of the Roman Catholic church, and as such have custody of the baptismal records. The priest who officiates at a baptism is supposed to record it.

Q. What are the facts that the priest is required to record?

(Testimony of Father Patrick Harnett.)

A. He is obliged to record the date of the baptism, the name of the child baptized, the names of the parents of the child—

Mr. Dockweiler: Just one minute. Now, one minute, Monsignor, please. Now, I believe that the prosecution is going to attempt by this witness—

Mr. Palmer: We object, Your Honor, to the gentleman drawing any conclusions here.

The Court: Make your objection, Mr. Dockweiler.

Mr. Dockweiler: I was preliminarily going to state, I understood from past experience that they were going to attempt to prove the date of the baptism of the defendant.

The Court: Now, when it comes to that you can make your objection.

Mr. Dockweiler: I now object—

The Court: Please sit down, Mr. Dockweiler. The statement he is making now does not contain that objection. Proceed with your statement.

Mr. Lawson: These baptisms—

The Court: Read the statement.

Mr. Dockweiler: I want to object to the question upon the ground it is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

The Court: Read the statement.

(Last statement read by the reporter as follows: "He is obliged to record the date of the baptism, the name of the child baptized, the names of the parents of the child")

(Testimony of Father Patrick Harnett.)

The Witness (continuing): The date of birth, the date of birth of the child, and the names of the sponsors.

Q. By Mr. Lawson: Those are the facts you are required to enter?

A. Yes.

When a baptism is performed at a church, or any church, and the priest's home is adjacent to the church, the baptism is usually recorded before it is performed. In cases where the baptism is performed at a distance from the church, then the priest makes a note of the facts in the case and transfers them from his note book either to a day book or to the baptismal register.

I have the baptismal record for the year 1886 with me, and there is recorded in that book the baptismal record of the defendant, Edward Henry Phelan. I baptized the child, and after referring to the record can state the date of the baptism.

The Court: All right. I think his testimony as to the date of baptism would be better than the record.

Mr. Dockweiler: Yes, Your Honor, if it is competent.

Q. By the Court: Now, what date was the child baptized?

Mr. Dockweiler: Now, just one minute. Now, pardon me, Your Honor, I want to get in an objection. We object to that question upon the ground that the same is incompetent, irrelevant and immaterial. As the defendant contends, it is wholly immaterial to the issues in this case as to when the defendant was baptized in the Roman Catholic church.

(Testimony of Father Patrick Harnett.)

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

The Court: Answer the question, Father Harnett.

A. I baptized the child on the 8th of August, 1886.

Q. By the Court: Where?

Mr. Dockweiler: The same objection. The same ruling, I assume?

The Witness: I am not quite certain as to where the child was baptized, but I assume it was baptized in Los Nietos.

The Court: Anything further of this witness?

Q. By Mr. Lawson: What is the teaching, Father Harnett, in the Catholic church in regard to infants dying before baptism?

Mr. Dockweiler: We object to that as incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

The Court: Now, wait a minute. I will overrule the objection. You may answer it later. Father, did the parents of this defendant at that time belong to the Roman Catholic church?

A. Yes, sir.

Q. Do you know who attended this baptism and were sponsors for the child?

A. I knew at the time the child was baptized, but I have forgotten and don't know.

The Court: Now, you may answer the question.

Mr. Lawson: Read the question.

(Last question read by the reporter as follows:
"What is the teaching, Father Harnett, in the Catholic

(Testimony of Father Patrick Harnett.)

church in regard to infants dying before baptism"?)

Mr. Dockweiler: May I have an exception to that?

The Court: Yes, sir.

Mr. Dockweiler: Thank you. Exception.

A. The teaching of the Catholic church with regard to the death, or with regard to the salvation of infants who die without baptism is that no one, no child who is unbaptized and dies before it attains the use of reason can enter into the kingdom of heaven.

Q. Was there a practice in your church that was known to those parents concerning when the children should be baptized?

Mr. Dockweiler: Now, we object to that question upon the ground that it is incompetent, irrelevant and immaterial, and upon the ground that it assumes that the Monsignor knew what was in the minds of the parents of the child.

The Court: I will overrule the objection.

Mr. Dockweiler: Exception. I guess the question better be repeated.

The Court: Read it to him.

(Last question read by the reporter.)

A. I don't know.

I don't remember the incident of the baptism at all. The parents of the child lived about 15 miles from the parish school, and so far as I know he did not attend the Los Nietos school.

Testimony of Mrs. Mary Isbell, for the Government.

Mrs. Mary Isbell, a witness called on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lawson:

My full name is Mary Isbell, and I live in Whittier, Los Angeles County. I know the defendant in this case and live just a little ways from him, but I don't know exactly how far. I don't know exactly how many years I have lived at Whittier, but I have been neighbors of the Phelan family ever since I have been there. I guess it has probably been forty years. I have a daughter who was born July 11th, I think, as well as I remember, but I don't remember the year that she was born.

Q. By Mr. Lawson: Mrs. Isbell, do you know whether or not Mrs. Phelan was confined at about the same time that you were confined with your daughter, Rexie Dale?

Mr. Dockweiler: One moment. We object to that question as leading and suggestive; incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception. Here is a lady who has got—

Mr. Lawson: Your Honor—

The Court: Never mind. Wait a minute. I have ruled on this question. Let her answer it.

Mr. Dockweiler: All right. Now, does she remember the question, Your Honor?

Mr. Lawson: Why, of course she does.

(Testimony of Mrs. Mary Isbell.)

Mr. Dockweiler: Well, I don't know.

Mr. Lawson: Your Honor, we object to this line of argument. We have a right to ask the witness—

The Court: Be seated, Mr. Lawson. Let the witness answer the question.

(Answer of the witness inaudible and the reporter requested that she repeat the answer.)

A. I said that I didn't remember.

Mr. Lawson: Mrs. Isbell, did Mrs. Phelan visit you about the time of the birth of your daughter, according to the best of your recollection?

A. I couldn't say for certain whether she did or not.

Q. According to the best of your recollection?

A. I couldn't say because I really don't remember.

Q. Do you know, Mrs. Isbell, whether or not at the time you were confined with your daughter, Rexie Dale, whether at that time or after—whether the defendant was born after that time, when you were confined with your daughter, Rexie Dale?

A. I couldn't say.

Mr. Dockweiler: We object to the question.

Mr. Lawson: Now, then, I object to the interference of counsel for defendant until we have a chance to put the question.

Mr. Dockweiler: I thought you had finished the question.

The Court: Wait a minute, Mr. Dockweiler. You will address the court.

Mr. Dockweiler: Well, yes; pardon me.

The Court: It is unnecessary,—counsel, Mr. Law-

(Testimony of Mrs. Mary Isbell.)

son has a right to make an objection, and it is perfectly proper for him to make it any time he wants to make an objection to a question you ask. This question has been asked and answered as I understand it. Read it, Mr. Reporter.

(Last question and answer read by the reporter as follows:)

“Q. Do you know, Mrs. Isbell, whether or not at the time you were confined with your daughter, Rexie Dale, whether at that time or after—whether the defendant was born after that time when you were confined with your daughter, Rexie Dale.”

“A. I couldn’t say.”

Q. By Mr. Lawson: Well, according to your best recollection, Mrs. Isbell?

A. Well, really I couldn’t tell you. Of course, I don’t know anything about when he was born.

Q. But, just according to your best recollection. Do you remember whether or not at that time Mrs. Phelan was confined with the defendant at the same time when you were confined with your daughter, Rexie Dale?

Mr. Dockweiler: We object to that question upon the ground that the question has already been put and answered.

The Court: The answer was stricken out. I will overrule it.

Mr. Dockweiler: Well, no, the second one was not.

The Court: Answer the question.

Q. By Mr. Lawson: According to your best recollection?

(Testimony of Mrs. Mary Isbell.)

A. Well, I declare I couldn't say, because I don't know.

Q. Well, what is your memory of that occurrence?

Mr. Dockweiler: We object to that upon the ground—

The Court: Wait a minute. Finish your objection.

Mr. Dockweiler: We object to that upon the ground that the same is incompetent, irrelevant and immaterial, and it has already been testified to by the witness that she did not know.

The Court: The objection will be overruled. Read the question to the witness.

Mr. Dockweiler: Exception.

A. Well, I thought mine was the oldest. Of course, I couldn't say positively.

Q. By Mr. Lawson: You thought that your daughter was older?

A. Was the oldest, yes. I don't know anything about how much, or anything about it, and I may be wrong in that. That is to my best recollection.

Cross-Examination

By Mr. Dockweiler:

I am seventy years old and have had eight children. I don't remember the year in which Rexie was born and I can't remember the year in which any of my children were born. Owing to my age, I certainly have a very poor memory. It is difficult for me to remember with any degree of certainty anything that occurred years ago.

Testimony of Miss Rexie Dale, for the Government.

Miss Rexie Dale, a witness called on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lawson:

My full name is Miss Rexie Dale; that is my professional name. Mrs. Isbell, who just testified, is my mother. I don't know the age of the defendant, Edward Henry Phelan.

Q. And when were you born, Miss Dale?

Mr. Dockweiler: We object to that as irrelevant and immaterial.

The Court: Objection overruled.

Mr. Dockweiler: Exception.

A. I was born July 11, 1886.

Q. By Mr. Lawson: July 11, 1886?

A. Yes.

Whereupon a discussion took place between court and counsel as to the admissibility of certain documentary evidence, at the end of which discussion the court, after duly repeating the admonition to the jury, took a short recess. After a few minutes the court reconvened, and the jury being all present, the proceedings of the trial were resumed.

Testimony of Haribet J. Rechsteiner, for the Government.

Haribet J. Rechsteiner, a witness called on behalf of the Government, having been first duly sworn, testified as follows:

(Testimony of Haribet J. Rechsteiner.)

Direct Examination

By Mr. Lawson:

My full name is Haribet J. Rechsteiner, and I am financial secretary of Los Angeles Council Number 621, Knights of Columbus. As such secretary I have received the application for the defendant for membership in the Knights of Columbus, also the authority to represent the supreme secretary. I have not the original application of the defendant for membership in the Knights of Columbus. That was filed with the court records at the last trial. I received it from the supreme secretary, submitted it to the District Attorney, and he filed them. That is the application which I received.

Mr. Lawson: Your Honor, I offer this application of the defendant as evidence.

Mr. Dockweiler: We object to it, Your Honor, upon the ground that it is incompetent, irrelevant and immaterial, no sufficient foundation having been shown therefor.

The Court: I do not know as I understand this.

Mr. Palmer: It is the application of the defendant for admission as a member of the order of the Knights of Honor.

Mr. Lawson: The Knights of Columbus, and he there states or sets out his birthday and signs the application. The signature is attached thereto.

The Court: The objection will be overruled.

Mr. Dockweiler: I note an exception.

Mr. Lawson: We submit this as Government Exhibit Number 1.

(Testimony of Haribet J. Rechsteiner.)

(The document so offered and identified was thereupon marked "U. S. Exhibit Number 1.")

Mr. Lawson: (Reading the document to the jury:)

"I, Edward Henry Phelan—" this is an application for associate membership in the order of the Knights of Columbus. (Reading:)

"I, Edward Henry Phelan, of number Whittier Street.—" With your permission I will read the pertinent part of this application, and then submit it to the reporter to copy. Will that be all right, Mr. Dockweiler?

Mr. Dockweiler: I stand by my objection.

Mr. Lawson: (Reading.) "— of Whittier, or town of Whittier, county of Los Angeles, state of California,"—

The Court: (Interposing) Mr. Lawson, I think probably you ought to prove the signature on that document, inasmuch as they object to the competency of it, that is, the signature of the defendant to the document. Simply because the paper bears his name does not prove its authenticity.

Witness: I attended the first trial and heard a part of the defendant's testimony. I heard his testimony in regard to the signing of the application, I heard the middle of it.

Q. Do you remember whether or not he stated at that time he signed this application?

A. Yes.

Q. He admitted signing it, did he?

A. He admitted signing it; yes, sir.

(Testimony of Haribet J. Rechsteiner.)

Mr. Dockweiler: As I understand, the witness answered the question, "did ye," yes.

The Court: That doesn't make any difference.

Mr. Dockweiler: I move to strike out the answer with a view to enabling me to note an objection.

The Court: You can move to have it stricken out on the ground that you object to the question.

Mr. Dockweiler: I object to the question upon the ground that the same is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled. The motion is denied.

Mr. Dockweiler: I note an exception.

The Court: Proceed, Mr. Lawson.

Mr. Palmer: I think the record shows that was stricken out?

The Court: No, it was not; at least I did not so rule; I told him to make a motion to strike out.

Mr. Lawson: We will begin all over again. The application for associate membership in the order of the Knights of Columbus reads: (Reading) (United States Exhibit No. 1, Application of Edward Henry Phelan for Membership in Los Angeles Council, Knights of Columbus, dated June 14th, 1909.) "I, Edward Henry Phelan, of Whittier, city of Whittier, county of Los Angeles, state of California, hereby apply for associate membership in the order of the Knights of Columbus through Los Angeles Council Number 621, and do declare and say that I was born in Whittier on the 13th day of July, 1886, and am 23 years of age, as computed from my nearest birthday;

(Testimony of Haribet J. Rechsteiner.)

that I am a practical Roman Catholic, and dutifully attend the Whittier church of the above city or town."

The rest of it is by-laws, etc., of the organization. (Reading.) "Signed by me, Edward H. Phelan, this day of June, the 14th, 1909. Witness: Reverend W. G. Gorrell, C. M., Los Angeles Council number 621."

Testimony of Mrs. Susie Daven, for the Government.

Mrs. Susie Daven, a witness called on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lawson:

My name is Mrs. Susie Daven, and I live near Pico Station near Whittier. We get our mail from Rivera. I have lived in Los Angeles county ever since I was ten years old. I know the defendant in this action. My husband was working for Mrs. Phelan, and we lived there then. That was in the month of October, 1914, on the 16th of October. We lived there from that time until the 4th of January, 1916. We moved from Mrs. Phelan's ranch January 4th, 1916. We went back to the Phelan ranch on the 17th day of July, 1916, and moved from there on the 14th day of May of this year, 1917. I left before my husband.

Q. While you were on the ranch, at that time, just before you left this year, did you or did you not hear the defendant make any statement as to whether or not he would register?

Mr. Dockweiler: We object to that upon the ground

(Testimony of Mrs. Susie Daven.)

that the same is incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

Mr. Dockweiler: I note an exception.

The Court: Read the question.

(The reporter thereupon read the pending question as previously recorded.)

Mr. Dockweiler: We do not deny that we did not register, Your Honor.

The Witness: He said he would not register because he was not going to be killed for any other nation, and he would disguise himself and go out into the mountains either of Arizona or Nevada.

Mr. Lawson: You may cross examine.

Cross-Examination

By Mr. Dockweiler:

I live in Dubois' place, near Pico Station, with my husband and the children. I have been married with my husband nine years. We were married in Los Angeles. I was at my home. The judge married us on Fickett street. He came to the house and married us. I don't remember the number of the house, but it is on Fickett street near First street. I was living there at the time, and my husband was living there.

I first became acquainted with the defendant, Edward Phelan, in October, 1914. Prior to that time I did not know either the defendant or his mother, or any other member of his family. I got acquainted with him the day we moved there, October 15th. When we moved there, there was with me my husband and my three children. One of my children is fifteen years of age,

(Testimony of Mrs. Susie Daven.)

one thirteen, and one seven. I did not do any work on the ranch. My husband was employed by Mrs. Phelan on October 15th, 1914, to labor on the ranch. He used to cultivate and plow the ranch, and he remained there from October 15th, 1914, to January 14th, 1916. Then we left the ranch and came to Los Angeles. We went back July 17th, 1916, and our children went with us on that occasion, and we remained on the ranch from July 17th, 1916, to May 14th, 1917. On that date I went to live at Montebello. My husband did not leave on that date; he left about two or three weeks after that.

I remember living on the ranch on May 14th, 1917, and am positive as to that date because I know I moved from there the 14th day of May and went to Montebello. We occupied the old place of Mrs. Phelan's, the old ranch. Edward was living on the old ranch for about six months while we were there, but not the last time, it was the first time. We left the ranch January 4th, 1916, and lived in Los Angeles from that time until July 17th, 1916, when we left. At that time we were living on the old ranch, but at that time Mrs. Phelan and Edward were not living on the old ranch. They had moved from there to the other place, where they are now living. They call that the Judson place. The defendant lives with his mother. He is a single man. During all the time I have known him he has lived with his mother. He does a little of everything on the ranch, works there just like everybody else.

I think Mrs. Phelan, and her son, the defendant in this case, and her son, Dan, moved from the old

(Testimony of Mrs. Susie Daven.)

ranch to the Judson place about the 15th or 16th of April, 1915. I guess they are now living on the Judson place. We lived in Los Angeles from January 4th, 1916, to July 17th, 1916, when we moved back to the old ranch, not the Judson ranch, and we remained on the old ranch from July 17th, 1916, to May 14th, 1917. The old ranch is located I guess in what they call Whittier, or Los Nietos; I don't know what they call that street. The Judson place I should judge is about four or five blocks from the old ranch. The Lambert's and Isbell's ranches intervene between them.

When I left on May 14th, 1917, I went to Montebello, which I guess is about three or four miles from Whittier. After leaving for Montebello I did not return to the Whittier ranch, and my husband went to work for Mr. Meek. After leaving the ranch, on May 14th, 1917, I did not see the defendant, Edward Phelan, again.

Q. Then, as I understand you, you yourself, with the children, left the Phelan ranch on May 14th, 1917?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And you went to Montebello?

A. Yes, sir.

Q. When with reference to May 14th, 1917, did you see Edward Phelan?

A. It must have been about the first Sunday of the month when he was in the old place there with us. That is where he made the remark.

Q. That would be the first Sunday in May?

(Testimony of Mrs. Susie Daven.)

A. Yes, sir.

Q. May, 1917?

Mr. Dockweiler: Is there a calendar here?

By Mr. Dockweiler: Q. (After having referred to calendar.) That would be May 6th. If the first—

The Court: (Interposing) The first Sunday is the 6th of May.

By Mr. Dockweiler: O. If the first Sunday in May is as shown by the calendar to have been May 6th, then the last day you talked to Edward Phelan or heard Edward Phelan talk to you was May 6th?

A. It must have been, because I know it was the first Sunday of May.

Q. The first Sunday of May?

A. Yes, sir.

Q. How do you remember that?

A. Because the second Sunday of May we were getting ready to move, and then I did not see Ed. Phelan.

Q. Did you not see Ed. Phelan after May 6th, 1917?

A. I seen him in the place, but not to talk to him.

Q. You did not talk to him and you did not hear him talk?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. When did this conversation occur? You are certain about these dates?

A. Yes, sir.

Q. How is it you are certain about the dates?

A. Because I do not forget these things.

(Testimony of Mrs. Susie Daven.)

Q. Did you make a memorandum?

A. No, sir; I did not, but then I can remember just the same.

Q. Then, as a matter of fact, you have not talked to the defendant, Edward Phelan, since May 6th, 1917?

A. No, sir.

Q. And you have never heard him talk since May 6th, 1917?

A. No, sir.

Q. Isn't that right?

A. Yes, sir.

Q. When did you hear this conversation that you have referred to, or these statements you have referred to, as having been made by the defendant?

A. I heard him several times, but that was the last time I heard him when he was in the kitchen with us.

Q. When did the defendant make the statement that you refer to the first time?

A. The first time?

Q. Yes.

A. He made those remarks two or three times before, but I know on that Sunday he said he would go away and disguise himself and would not go to fight for somebody else's country.

Q. He would not fight for somebody else's country?

A. Yes, sir.

Q. That was when he made this statement on May 6th?

A. It must have been May 6th. I know it was the first Sunday of May.

(Testimony of Mrs. Susie Daven.)

Q. Then on the second Sunday of May, 1917, Edward Phelan made that statement?

A. Yes, sir.

Q. What was that statement? Just quote his exact words.

A. I asked him if he was going to register, and he said "No," that he was not going to register because they were not going to take him away to fight for somebody else's country; that if they came after him he was going to disguise himself and go away to the mountains.

Q. Who heard him make that statement?

A. It was my husband and my children. They were all with me.

Q. Where were you when that statement was made?

A. It was on the old place; it was the old ranch.

Q. Where? What part of the old ranch?

A. It was in the kitchen of the house, I know.

Q. What house?

A. Mrs. Phelan's.

Q. How many houses are there on that ranch?

A. There is two places she owns, the old place and the new place.

Q. You were not on the Judson place, the new place?

A. No, sir; we were on the old place.

Q. You refer to the house on the old place?

A. Yes, sir.

Q. And you were in the kitchen?

A. Yes, sir.

Q. What time of day was this?

(Testimony of Mrs. Susie Daven.)

A. It was in the afternoon.

Q. What time in the afternoon?

A. I guess it was between one and two o'clock.

Q. Between one and two o'clock?

A. Yes, sir.

Q. And it was on a Sunday?

A. Yes, sir.

Q. What was he doing down there on Sunday?

A. They all used to come on Sunday there.

Q. Was Mrs. Phelan present?

A. No, sir.

Q. When he made that statement?

A. No, sir; no one was present but him, the children, my husband and I.

Q. Who?

A. The children—

Q. (Interposing) and your husband, and yourself?

A. Yes, sir.

Q. What is your husband's name?

A. Frank Daven.

Q. Did you make a memorandum of what he said?

A. No, sir; I did not.

Q. How do you recall that he said the things which you have just testified to?

A. Because I remember those things.

Q. You remember them?

A. Yes, sir.

Q. You have not forgotten any part of anything he said?

A. No, sir.

Q. How did you come to discuss that matter?

(Testimony of Mrs. Susie Daven.)

A. My husband and the Phelan boys always used to talk about the war. My husband is French and they always used to side in with German people. He said the Germans were going to win the war, and tried to take the German side, because my husband is French.

Q. It was this controversy between your husband on the one side and the Phelan boys on the other?

A. Yes, sir.

Q. Which Phelan boys?

A. It was Dan Phelan and Ed. Phelan.

Q. Dan Phelan and Ed. Phelan?

A. Yes, sir.

Q. Any other Phelan boy?

A. No, sir.

Q. Did any Phelan girl talk on the subject of the war?

A. No, sir.

Q. Did you hear Anna Phelan talk on the subject of the war?

A. No, sir.

Q. Who has talked to you about this case? How did you come to be a witness in this case?

A. Because they subpoenaed me.

Q. Who subpoenaed you?

A. I did not see the man who brought the subpoena, because I was here in town. My husband brought the subpoena and came with me this morning.

My husband, my girl and I came here this morning. I talked with Mr. Boden concerning what Edward Phelan had said to me on May 6th, 1917. I mean the gentleman now standing: I talked to Mr. Boden be-

(Testimony of Mrs. Susie Daven.)

cause he was over there. He asked me if we knew anything about what Edward Phelan had said as to whether he was going to register or not, and then I told Mr. Boden what I have said, the same words. I don't know who told Mr. Boden to come and see me. I knew Edna Phelan, Joseph Phelan's wife. She is not a particular friend of mine. I used to see her on the ranch with the Phelan family, but didn't know her so very well. I have not seen Edna Phelan since I left the ranch until this very day, and I have not talked to her or to Joseph Phelan since I left the ranch. I have not seen any of the Phelans since I left the ranch. I know it was May 6th that that talk occurred, and if the first Sunday of May was the 6th, then that was the date.

Q. How did you come to leave the ranch?

Mr. Palmer: We object to that as incompetent.

The Court: I do not see the relevancy of it.

By Mr. Dockweiler: Q. Are you living with your husband now?

A. Yes, sir.

Q. When did you return? Isn't it a fact that you eloped with another man and were arrested?

Mr. Lawson: We object to that.

The Court: Mr. Dockweiler, I do not think that question is relevant. I request you not to follow it any further.

Mr. Dockweiler: Very well, Your Honor.

I don't remember when the conscription law was adopted by Congress or when it was enacted. My husband is in court now.

(Testimony of Mrs. Susie Daven.)

Q. You do not want to make any correction as to any dates or anything of that sort?

A. No, sir.

Q. Don't you know, as a matter of fact, that the conscription law was not enacted until May 18th, 1917?

A. No, I don't.

By Mr. Dockweiler: Q. You don't know?

A. No, sir.

Whereupon, at 4:30 p. m., the court, after duly admonishing the jury, adjourned court until Thursday, October 18th, 1917, at the hour of ten o'clock a. m. On Thursday, October 18th, 1917, at ten o'clock a. m., all parties being ready in the above matter, the roll of the jury was called by the clerk, and the jury all being present, Mrs. Susie Daven was recalled for further cross-examination.

Cross-Examination

Resumed by Mr. Dockweiler:

Q. Mrs. Daven, you are not very friendly to the defendant, are you?

A. Well, I don't know.

By Mr. Dockweiler: Q. Mrs. Daven, you are not very friendly to the defendant, are you?

A. Well, I don't know.

Q. Yes. Well, isn't it a fact that you left the ranch on May 6th, or the latter part of April—

A. This year?—

Q. And in connection therewith there was some difficulty—

A. No, sir.

Q. There was none?

(Testimony of Mrs. Susie Daven.)

A. None.

Q. Isn't it a fact that after leaving the ranch you had some difficulty?

A. No, sir.

Q. By Mr. Dockweiler: Is it not a fact, Mrs. Daven, that you blame the defendant for some action taken against you by your husband immediately following your departure from the ranch?

A. No, sir.

Q. It is not a fact?

A. No, sir.

Q. Well, what is your state of feeling towards the defendant?

A. Why, I have none.

Q. How?

A. I have none.

Q. You have no antagonism toward him at all?

A. No, sir.

Q. How?

A. No, sir.

Q. And have you attached no blame whatever to him—

A. No, sir.

Q. —for anything that subsequently happened to you after leaving the ranch?

A. No, sir.

Q. Of any kind, whatsoever?

A. No, sir.

Q. That is correct?

A. Yes, sir.

I left the ranch on May 6th, or the latter part of

(Testimony of Mrs. Susie Daven.)

April, this year, but there was no difficulty in connection with my leaving, and I had no difficulty after leaving. I do not blame the defendant for some action taken against me by my husband immediately following my departure from the ranch; that is not a fact. I have no state of feeling toward the defendant and no antagonism toward him at all, and have attached no blame to him for anything that subsequently happened to me after leaving the ranch.

Testimony of Frank Daven for the Government.

Frank Daven, a witness called on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lawson:

My full name is Frank Daven, and I live at Pico Station, Los Angeles county. I am acquainted with Edward Phelan and have known Mrs. Phelan since October 15th, 1914. I have worked on the same ranch with Edward Phelan. I worked one place, the old place. That was in 1914, 1915 and 1916. I left the 4th day of January, 1916, and returned to the ranch July 17th, 1916. I left the last time June 7th, 1917.

While on the ranch the last time in 1917 I had a conversation with the defendant in regard to military service, the first Sunday in May, at my home on the Phelan ranch. My wife and daughter were present at that time. I can't think of anybody else.

Q. Now, what did the defendant say at that time?

A. Phelan say?

(Testimony of Frank Daven.)

Mr. Dockweiler: One minute. We object to that.

Mr. Lawson: Wait a minute.

Mr. Dockweiler: We object to that question upon the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Dockweiler: Exception.

The Court: Answer the question.

A. Mr. Phelan says—he says he never got to register; he don't want to get killed going to fight for France and England—

(Balance of the witness's answer not understandable.)

The Court: Just a minute. The reporter can't understand you. Start again.

A. Mr. Phelan says he don't want to get to register because he don't want to get killed for France and England.

(Balance of witness's answer not understandable.)

Mr. Palmer: He said he let his whiskers grow and go up into the mountains and then they couldn't find him.

The Court: Mr. Palmer, don't do that any more.

Mr. Palmer: I beg Your Honor's pardon. I didn't understand it.

The Court: Don't state what the witness said any more, please. Now, wait a minute. Let us see what the reporter has. You talk too fast. Your tongue, anyhow, is hard to understand.

(Answer of the witness read by the reporter.)

The Court: Now, start in here and go slower.

A. He says he don't want to get killed for France

(Testimony of Frank Daven.)

and England, and then go to war. He let his whiskers grow and get away up in the mountains, up in Nevada some place, and the board couldn't find him.

Q. By the Court: What did you say about the mountains?

A. Well, he says he go to the mountains and go some place to Nevada and the board couldn't find him; couldn't get him.

The Court: Proceed.

Q. By Mr. Lawson: Did you have any other conversations—just a minute now—any other conversations with the defendant after that time?

A. Well, sometimes we talk about the war every day, because I am French and Phelan take the German side, and I pay no attention after that.

Cross-Examination

By Mr. Dockweiler:

We started to talk about the war since the draft business started in 1917. I did not have any conversation with Mr. Phelan about the war or hear him say anything about the war before the conscription law was enacted.

When I was on the ranch there was besides Mr. Phelan and myself Mr. Gunar and Mr. De La Real; those were the only men. I don't remember any other men working on the Phelan ranch since April 1st, 1917, other than those. Edward Phelan is the foreman of the ranch, the owner of the ranch. I can't explain at all who Edward Phelan worked for. I worked on the place for Edward Phelan; for Mrs. Phelan anyhow. Mrs. Phelan, his mother, kept my time. Since April

(Testimony of Frank Daven.)

1st, 1917, nobody else worked with me on the ranch except Edward Phelan, Mr. Gunar and Mr. De La Real. Peterson is the same man as Gunar. Peterson must be Gunar. Peterson's name is Gunar; Gunar Peterson is the full name. When I said Mr. Gunar I meant Mr. Gunar Peterson.

Since April 1st, 1917, I had a controversy with Mr. Peterson in reference to the war. Mr. Peterson, during all the time that I was working on the Phelan ranch, worked there, and Edward Phelan, as foreman, myself, Mr. Gunar Peterson and De La Real did all the work. Since the war broke out in 1914 there has been a great deal of talk on one side or the other with reference to the war. I was born in France, and naturally I am a Frenchman. I think Peterson was born in Sweden; so far as I understood he was born in Sweden. Since the war broke out I was not strong for anybody, but I am just like everybody; my sympathies were with France. Peterson, the Swede, was somewhat favorable to Germany, and between us two there was a great deal of conversation pro and con about the war.

Q. And isn't it true that most of the conversation while you were on that ranch respecting the war was between yourself and Peterson?

Mr. Palmer: We object to that, if the court please, as incompetent, irrelevant and immaterial, and not proper cross-examination. The examination—

The Court: I will hear from you on that, Mr. Dockweiler. It don't seem to me like it is relevant.

Mr. Dockweiler: Sir?

(Testimony of Frank Daven.)

The Court: I don't see the relevancy of it. I don't see how it has any bearing.

Mr. Dockweiler: I am going to show that these two men practically were in dispute all of the time and there was a disposition—well, to play with our friend here, and oftentimes things were said that were not seriously meant by other people on the ranch; that is, by people on the ranch who discussed matters with Mr. Daven, because of his strong advocacy long before the war occurred, and from that I intend to lead up to Ed. Phelan's connection with any conversation.

The Court: The objection will be sustained.

The conversation that I have testified to occurred in the kitchen. I cannot state the day of the week, but it was the first Sunday in May. I remember it because I was there.

Q. By Mr. Dockweiler: Now, did you talk about the war any differently from other people?

Mr. Palmer: We object to that, if the court please, as calling for—

The Court: The objection will be sustained.

Q. Was there any incident that impresses that date upon you, makes you remember that date particularly?

A. I don't put that date in my head, because I know when he talked to my wife; I remember that sure.

Q. Well, you had hundreds of talks about the war with Mr. Phelan, Mr. Peterson, and with other people?

A. Yes; but I remember that very well.

I left the Phelan ranch June 7th, 1917. I told my wife two weeks before to move. I gave her the money to move to Montebello and then I worked two weeks

(Testimony of Frank Daven.)

and a half and then left. My wife left the ranch in May. I am not sure of the date, maybe the 20th. I know I left a couple of weeks afterwards. I don't remember the exact date my wife left; I am not sure. I don't know for sure what date she moved. I know she moved on Sunday, but I don't remember the date that my wife and children moved. My wife quit two weeks before I did. I quit the 7th of June, 1917; I am certain about that.

Q. Well, were you in court when your wife testified?

A. Yes, sir.

Q. You remember she said she left the ranch May 14th?

A. I don't remember the day.

Q. Well, do you remember hearing your wife testify she left May 14th?

A. Well, maybe she did.

I told her to leave the ranch and go to Montebello, and she left with my approval, and I knew where she was going beforehand. It is not a fact that she left the ranch without my consent and without my knowledge.

Q. By Mr. Dockweiler: Isn't it a fact that your wife became quite unfriendly to the defendant Phelan, because of some advice Mr. Phelan gave to you, and some assistance he gave to you immediately following the departure of your wife from the ranch?

Mr. Lawson: Your Honor, objected to for the same reason, calling for a conclusion of the witness.

The Court: The objection will be sustained.

(Testimony of Frank Daven.)

Q. By Mr. Dockweiler: Did your wife ever express to you any feeling of hostility regarding Edward Phelan because of some assistance that Edward Phelan rendered you, following the departure of your wife from the ranch?

Mr. Lawson: Object to that, Your Honor, on the grounds of hearsay and calling for a conclusion of the witness.

The Court: The objection will be sustained.

Mr. Dockweiler: Exception.

The Court: There are two or three reasons why it should be sustained. I don't suppose it is necessary for me to state them.

Q. By Mr. Dockweiler: When you left the ranch, did you have any conversation with the defendant, Edward Phelan—

A. Yes, sir,—when I left; no, sir.

Q. Wait until I finish my question.

Mr. Palmer: Wait before answering the question until there is an objection.

Q. By Mr. Dockweiler: About the time that you left the ranch, did you have any conversation with defendant Edward Phelan—

A. No, sir.

Q. —respecting your wife and her departure?

Mr. Lawson: Just a moment. Don't answer. Objected to, Your Honor, calling for a conclusion of the witness, calling for a matter irrelevant, immaterial and incompetent.

Mr. Palmer: And not proper cross-examination.

The Court: I will sustain an objection to that.

(Testimony of Frank Daven.)

Mr. Dockweiler: Exception.

When I left the ranch I was friendly with Edward Phelan and am friendly with him now. He treated me pretty good while I was on the ranch.

Q. Did he ever do anything to you to make you feel unkindly toward him?

Mr. Palmer: We object to that, if the court please, as incompetent, irrelevant and immaterial.

The Court: The objection will be sustained.

Mr. Dockweiler: Exception.

I have not seen Edward Phelan since I left the ranch on June 7th, 1917. When I left the ranch I did not have any controversy, quarrel, anger or difficulty at all about my pay or about anything.

The conversation that I had with Edward Phelan in May, when he stated he would not fight for France or England, took place in the morning of that day. It occurred about half-past nine, or something like that, on a Sunday morning. I don't know for sure what time it was. It was something like that; around nine and ten. It was early in the morning, between nine and ten o'clock; and it was a Sunday morning.

Q. Now, what other conversation did Edward Phelan have with you, or in your presence, in the kitchen or before he entered the kitchen that Sunday morning?

A. What was it about? I never paid any attention after that at all, because we talk every day.

Edward Phelan did not live on the ranch where I worked, but lived on the Judson place, which is about three hundred yards away. He was in the habit of visiting the old place on Sundays. He would be there

(Testimony of Frank Daven.)

in the morning, noon and evening on Sunday and during work time. He visited the old home place on Sundays just like he did on the other days. He came that morning to see the horses, the corral, if everything was right.

I know Dan Phelan; he is Edward's brother.

Q. Well, what does Dan do around there?

Mr. Palmer: We object to that, if the court please, as incompetent, irrelevant and immaterial, and not proper cross-examination.

The Court: Well, I don't see the relevancy that has, Mr. Dockweiler.

Mr. Dockweiler: Well, I tried to get from him who his fellow workers were. He says Peterson and De La Real.

The Court: Well, you can ask him a leading question concerning Dan Phelan and whether he worked there, and so forth. I will sustain an objection.

Mr. Dockweiler: Exception.

Dan Phelan worked upon the ranch during the time that Peterson, De La Real and I worked there. I forgot to mention him. Every day that I worked for Mrs. Phelan, beginning in 1914, it is a fact that Dan Phelan worked on the ranch as a laborer as I did during the entire time. I forgot all about Dan when I mentioned the persons who worked on the ranch with me. Dan Phelan came around to the ranch every morning, Sundays and every other day. He went to the old home place on Sundays just like Ed. did.

Q. All right. Now, on this particular Sunday morning, whether it was nine o'clock or ten o'clock, or

(Testimony of Frank Daven.)

half-past nine, what did defendant Ed Phelan say to you, if anything, as to why he went there that morning?

A. Well, once in awhile he go home and talk to me.

Q. How?

A. Once in a while he go to my house and we talk a little bit.

Q. And what would you talk about?

A. Talk about the work, or something.

Q. About the work?

A. Yes, sir.

Q. All right. Now, how did the conversation occur in which you say Ed. Phelan made these statements, that he would not fight for France or for England?

A. That conversation come up—

Q. How did it happen?

A. That conversation come out because my uncle's wife has got two Frenchmen rents his ranch, and the French consul comes out and says, "Boys, you have to get ready to go to war. We are going to want you any time." Ed. Phelan says, "I am no fool to go into the war to fight for nobody. Before I get into the war, I go out, go away in the mountains, let the whiskers grow and nobody can find me.

Q. Now, did the French consul come out there, or anybody representing the French consul to see you?

A. No, sir.

Mr. Dockweiler: All right. Will you please, Mr. Reporter, read the witness's answer.

(Last answer read by the reporter.)

A. That is the fact.

Q By Mr. Dockweiler: Well, now, Mr. Daven,

(Testimony of Frank Daven.)

can't you tell us what happened as soon as Mr. Phelan went—coming to the house, what you said to him, and what he said to you, in which he made this statement that you claim he did. What was the first thing he said?

A. Oh, well; I don't remember the first thing. He just came out to my house like he come once in a while, and we talked about some war question. That is how it started then.

Q. Well, now, this was early Sunday morning?

A. Yes, sir.

Q. What was the first thing that he talked to you about that morning?

A. That morning he started, when he come home, he started to talk to my wife about that matter.

Q. By the Court: About what?

A. Started to talk to my wife the first thing.

Q. Well, what did he start to talk to your wife about?

A. Well, he come home once in awhile and we talked about one thing and the other, and that is how he started.

Q. By Mr. Dockweiler: Well, how did Ed. Phelan start to talk to your wife about the war? What did she say to him that caused him to talk about the war?

A. Well, he talked to my wife about the war, because my wife's uncle, those two boys have to go in the war, and my wife told Ed. Phelan those two boys would have to go in the war. Maybe they kill those two boys any time. Ed. Phelan says, "No, I don't

(Testimony of Frank Daven.)

go to war for nobody." That is when it come out and start to talk about that.

Q. Well, then did you say anything to Ed. Phelan before he made any statement about the war?

A. No, sir.

Q. Did you have any conversation with him at all?

A. I had conversations every day.

Q. Before he made this statement on that Sunday morning?

A. No, sir.

Q. What were you doing in the kitchen?

A. Well, I guess—I sit down in the kitchen after my breakfast.

Q. Oh, you were eating breakfast?

A. After my breakfast.

Q. Well, this conversation occurred soon after you ate your breakfast?

A. Yes, sir.

Q. You ate your breakfast in the morning?

A. Yes, sir.

Q. Did your wife eat with you?

A. Yes, sir.

Q. Did Ed. Phelan eat breakfast there?

A. No, sir.

Q. All right. Now, when Ed. Phelan came in that morning, who talked first?

A. I don't know. Phelan talk, and my wife talk; both of them started to talk about that. I didn't pay much attention to that, after I hear what they say.

The Court: Talk slower.

Q. By Mr. Dockweiler: Outside of what you have

(Testimony of Frank Daven.)

stated, can you give us—can you tell us how the conversation started, what was said by you or by your wife, or by Mr. Phelan? Tell us all that was said there.

Mr. Palmer: We object to that, if the court please, that the witness has answered the question two or three times.

The Court: Well, I will overrule the objection. I don't know; maybe we can understand him better if he tells it over again. Read the question.

(Question read by the reporter.)

A. Well, I tell you a little while ago, the conversation started—

The Court: Slower, now.

A. —because those two French boys have to go in the war.

Q. By Mr. Dockweiler: Who mentioned that?

A. My uncle's wife come up one day, and my wife told Ed. Phelan those two boys have to go in the war.

Q. That is, your wife told Ed. Phelan that these two boys had to go to war?

A. Yes, sir.

Q. Where were these two boys located?

A. On my uncle's ranch.

Q. Where is that located?

A. On Pequot Heights.

Q. Who is your uncle?

A. His name is Pequot.

Q. What is his first name?

A. I don't know the first name.

Q. How do you spell that?

(Testimony of Frank Daven.)

A. I don't know.

Q. You don't remember his first name?

A. No, sir.

Q. What is his last name?

A. Pequot.

Q. How do you spell that?

A. I can't spell that good in English.

Q. Well, please give the reporter some idea as to how to spell that name?

Mr. Palmer: If you know.

Mr. Lawson: If you know how to spell it spell it, and if you don't, say so.

A. I can't spell anyhow, because I can't spell in English.

Q. By Mr. Dockweiler: Well, spell it in French?

A. P-e-ke-o-t.

Q. What part of Pequot Heights does he live on?

A. I am not sure of the place; I have never been in the place; I know he lives over there.

Q. All right. Well, now, your wife told him about those two boys. What did she say to him. Now, tell us all that was said and how long Phelan remained there?

Mr. Palmer. We object to the question, if the court please, as not cross-examination, and as having been answered two or three times, and as being a double or triple question.

The Court: Well, now, next time don't interrupt. Go back, Mr. Reporter, and read the question.

(Last question read by the reporter.)

Q. By the Court: Do you understand it now?

(Testimony of Frank Daven.)

A. Yes, sir.

Q. Now, proceed and go slow?

A. Well, Phelan was in the house that morning. My wife was telling these two French boys have to go in the war, and then Ed. Phelan he says, "I am no fool to go in the war to fight for France and England, and before I go in the war I am going to let my whiskers grow, going up in the mountains, and go in Nevada some place so nobody can find me."

Q. Is that all?

A. That is all.

Q. That Phelan said?

A. That Phelan said.

Q. Then what did your wife say?

A. I don't know what my wife say after that.

I didn't say anything. I didn't get angry. The conversation was pleasant and agreeable and no one was angry at the time.

Q. As I understood, you had a daughter there?

A. No, sir. Who?

Q. Was your daughter there?

A. No, sir.

Q. By the Court: Your daughter?

A. My daughter was there; yes, sir.

Q. By Mr. Dockweiler: Your daughter?

A. Yes, sir.

My daughter's name is Jennie Daven. She is fifteen years old. There were no other children there. There were only four people present, myself, my daughter Jennie, my wife, and Ed. Phelan. I was married nine years ago. This daughter was by a former

(Testimony of Frank Daven.)

wife. I had one child before I was married to my present wife.

Q. By Mr. Dockweiler: After Ed. Phelan made the statement that you say he did, was anything else said by him?

A. No, sir.

Q. Then did he walk out?

A. Walked out.

Q. On that morning, did he give you any order for work to be done by you on that day or any subsequent day?

A. No, sir.

He apparently just dropped in for a friendly visit and remained about half an hour. He was in the habit of dropping around Sunday mornings or Sunday afternoons and talking with me.

Q. Did Dan ever come around and talk to you, his brother?

Mr. Palmer: We object to that as incompetent, irrelevant and immaterial.

The Court: The objection will be sustained.

Mr. Dockweiler: Exception.

Q. Did Peterson come around and talk to you while there?

Mr. Lawson: Object to that on the same ground.

The Court: The objection will be sustained.

Mr. Dockweiler: Exception.

Mr. Boden talked to me about the case. I saw Mr. Boden in the Pequot station going after me. He did not tell me who told him to talk to me or who sent him to me.

(Testimony of Frank Daven.)

I know Edna Phelan, John Joseph Phelan, the defendant's brother.

Q. Did Edna ever talk to you on the ranch at any time while you were employed there?

Mr. Lawson: I object to that, Your Honor, as improper cross-examination, and incompetent, irrelevant and immaterial.

The Court: The objection will be sustained.

Q. By Mr. Dockweiler: What, if anything, did Edna Phelan tell you about this case?

Mr. Lawson: Objected to, Your Honor, as purely hearsay; incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Dockweiler: Exception.

I did not have any conversation about this case before Mr. Boden talked to me, and nobody has talked to me about the case since Mr. Boden did. He is the only person who has ever talked to me about the case.

Thereupon it was stipulated that the defendant Edward Phelan did not register. Whereupon the Government rested their case.

Testimony of Edward Henry Phelan on Behalf of Defendant.

Edward Henry Phelan, the defendant, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

My name is Edward Henry Phelan, and I reside at

(Testimony of Edward Henry Phelan.)

Whittier, and have all my life. I am the defendant in this case. I was born March 13th, 1886. I did not register on June 5th, 1917, because I was past the age on that day. I honestly believed and understood that I was thirty-one years and past. Had I believed that I was not thirty-one years of age, I certainly would have registered. I have no objections to this war, either conscientious or otherwise.

There was a time in my life when I believed that another date was my birthday. That was up until four years ago. My impression was that I was born July 13th, 1886. Four years ago that impression was corrected, and during that four years I have always believed that my birthday was March 13th, 1886. I got that information from my mother.

I heard the testimony of Mr. Daven and Mrs. Daven. Mr. Peterson and a Mexican by the name of Mr. De La Real were hired men, and myself and brother, Dan, also worked there. Mrs. Daven was not employed on the ranch. She simply lived there with her husband. There had been considerable discussion about the war between Mr. Peterson and Mr. Daven. Peterson worked on my mother's ranch during all the time Daven was there.

Q. By Mr. Dockweiler: Now, were you present, or did you ever overhear any conversations between Daven on the one side, and Peterson on the other, respecting any controversy arising out of the war.

Mr. Palmer. We object to that, if the court please, for the reason it is incompetent, irrelevant and immaterial.

(Testimony of Edward Henry Phelan.)

The Court: I don't see the materiality or relevancy of it, Mr. Dockweiler.

Mr. Dockweiler: Well, it is purely preliminary. I want to show that these two people were more or less in controversy on the war all of the time. We will lead up and show if he had any connection with it at all.

The Court: The objection will be sustained.

Q. By Mr. Dockweiler: Did you, Mr. Phelan, visit on a Sunday morning or at about 1:00 o'clock on Sunday afternoon, or 2:00 o'clock on a Sunday afternoon, as Mrs. Daven testified, the place occupied by the Davens, on the first Sunday in May?

A. No, sir; I did not.

Q. Did you have any conversation in the kitchen of the Daven home on the first Sunday in May of this year respecting war?

A. No, sir.

Q. Did you on the first Sunday of May, 1917, in the kitchen of the house occupied by the Davens on the Phelan old home place either at nine o'clock, or ten o'clock, or between nine and ten o'clock on the morning of the first Sunday in May, as related by Mr. Daven, or at one o'clock, or at two o'clock in the afternoon on the first Sunday in May, as related by Mrs. Daven, speak to Mr. or Mrs. Daven, or to their daughter, or within their hearing, or any other persons, that you would not register, because you were not going to be killed for any other nation, and that you would disguise yourself and go out into the mountains,

(Testimony of Edward Henry Phelan.)

either of Arizona or Nevada or use language of similar kind or import?

A. No, sir.

Q. On that occasion?

A. No, sir.

Q. Or on either of those occasions?

A. No, sir.

Q. Or at any other time?

A. No, sir; I did not.

Q. Did you ever, in the presence of Mr. Daven and Mrs. Daven and the daughter, or in the presence of either of them, at any time, make any statement in substance or in effect that you would not fight for France or for England, and that you would not register, and that you would let your whiskers grow, and thus disguise yourself and go to the mountains, or go to Arizona, or Nevada, or any other place of the habitable globe?

A. No, sir; I did not.

Q. Did you use language of that kind, or of that import?

A. No, sir.

Q. Or in substance, something like that?

A. No, sir.

Q. Did you ever grow a beard?

A. No, sir.

Q. Did you on June 5th, 1917, which was the general registration day throughout the United States, do anything towards the enforcement of the draft law, and if so, what was it?

Mr. Lawson: Your Honor, objected to as incom-

(Testimony of Edward Henry Phelan.)

petent, irrelevant and immaterial, having absolutely nothing to do with the issue in this case.

The Court: Objection will be overruled.

A. Yes, sir; I had taken Mr. Peterson down to Los Nietos to register.

Q. By Mr. Dockweiler: On that date?

A. Yes, sir.

Q. Did you ever advise any human being not to register?

A. No, sir.

Q. As required by the proclamation of the President and the laws of the United States?

A. No, sir; never.

Q. Have you at any time in your life done anything, that is—well, have you at any time either prior to the enactment of the conscription law or subsequent thereto, done anything to hinder or impede or to delay the carrying out of that law in any manner whatsoever, directly or indirectly?

A. No, sir.

Mr. Dockweiler: Pardon me, but may I ask—I had another question.

Mr. Lawson: I will withdraw that then.

Q. By Mr. Dockweiler: Mr. Phelan, with reference to the Davens, what, if anything, occurred near or about the first part of May in connection with Mrs. Daven and your relationship with Mrs. Daven in reference thereto?

A. Why, when Mrs. Daven—

Mr. Palmer: If the court please, we object to that

(Testimony of Edward Henry Phelan.)

question as incompetent, irrelevant and immaterial.

The Court: The objection will be sustained.

Mr. Dockweiler: I desire, Your Honor—exception to the ruling—I desire, Your Honor, now, at this time, to show by this witness—

Mr. Palmer: We object, if the court please, to counsel stating in the presence of the jury a matter that he proposes to prove, that the court has ruled to be incompetent.

Mr. Dockweiler: Well, how may I—

The Court: I suppose, Mr. Dockweiler, that your idea is to offer evidence tending to show the relations, whether friendly or otherwise, between this defendant and the other people?

Mr. Dockweiler: Yes, Your Honor.

The Court: The evidence is immaterial. In a collateral matter of that kind, you are bound by the answer of the witness, as I understand the law,—and if you want to state—if you want to make a record of it, you may write out what you desire to say and file it with the reporter, and consider it as being your offer on that question.

Mr. Dockweiler: That is at the conclusion—during the recess?

The Court: Yes, sir.

Mr. Dockweiler: Yes, Your Honor. All right, thank you.

Cross-Examination

By Mr. Lawson:

I was under the impression that I was born July 13th, 1886, up until the year 1913, four years ago. I

(Testimony of Edward Henry Phelan.)

was nearly twenty-seven at that time. I believed for twenty-seven years that I was born July 13th, 1886. I was living with my mother during that time, and during that time whenever I had an occasion to state my birthday, I gave it as July 13th, 1886. I don't recall the occasion when I stated my birthday, but I do recall that I gave July 13th, 1886, and I understood it was that. During those twenty-seven years I did not have an idea that I was born on any other day, and I was twenty-seven years old when I changed my mind. I got the information that I was born March 13th, 1886, from my mother; she told me that I was born on that day. Since that date I have not held myself out to anybody as having been born March 13th, 1886. I have not told anyone since that time that I was born March 13th, 1886. It did not surprise me very much when I was told that my birthday was in March, and it was no shock to me to learn that my birthday was in March. I was then twenty-seven years old. The belief that had existed in my mind for twenty-seven years was then overturned without surprise on my part, and since that time I have believed that I was born March 13th, 1886, but I have never held myself out as having been born on that date.

I have not taken out any insurance of any kind, no life insurance since four years ago. I don't know that I have taken out any accident insurance; I don't think that I did. I could not say whether I ever took out a policy of accident insurance in the National Casualty Company in 1914. I have no recollection of it. I think my brother is the agent for that company. I

(Testimony of Edward Henry Phelan.)

could not say whether he solicited me to take out a policy or not.

Since the information was given me that my birthday was March, I have not told anyone about it, and I have never signed a paper since that time. I don't recall that the fact that my birthday was then was a source of comment around the house; no one said anything about it. There was no surprise. My mother gave me the information when I was twenty-seven years old, and the rest of the world doesn't know about it.

Redirect Examination

By Mr. Dockweiler:

I have not had any occasion that I recall, apart from June 5th, 1917, registration day, to give my birthday or to use my birthday during the last four years.

Q. Mr. Phelan, was there any other instance in your family of a brother for years observing a birthday in one month erroneously?

Mr. Lawson: Your Honor, objected to as incompetent, irrelevant and immaterial.

The Court: I will sustain the objection.

Mr. Dockweiler: Exception. I desire to prove by this witness—

Mr. Lawson: Now, Your Honor, object to what counsel expects to prove when the objection has been sustained.

The Court: Well, I will withdraw the ruling and let him state it.

Mr. Dockweiler: I offer to show by this witness, Your Honor, that the brother of this witness, John

(Testimony of Edward Henry Phelan.)

Joseph Phelan, five years regarded and observed July 22nd as his birthday, when, as a matter of fact, years after it was discovered or ascertained that June 22nd was his birthday.

Mr. Lawson: Your Honor, that witness is in court and can be produced; it is the best evidence.

The Court: Well, the objection will be sustained now.

Mr. Dockweiler: That is all. Exception.

Whereupon, the court duly admonished the jury and took a recess for five minutes. At the expiration of the recess, the jury being present, the proceedings of the trial were resumed.

(Testimony of Mrs. Mary Phelan on Behalf of Defendant.)

Mrs. Mary Phelan, a witness called on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

My name is Mrs. Mary Phelan, and I am the mother of the defendant. I am sixty-eight years old and reside in Whittier, and have resided there continuously since 1873. I am a widow.

The defendant, Edward Phelan, was born on March 13th, 1886. There were present at the time of the birth a midwife and a woman that lived in the neighborhood. The midwife was a Spanish woman by the name of Guara. I don't know how to spell the name. The midwife is dead and has been for quite a number

(Testimony of Mrs. Mary Phelan.)

of years. The neighbor who was present is Mrs. Martinez. She is alive and in the court room at the present time. Aside from the midwife, who is dead, and Mrs. Martinez, the neighbor, and myself, there was no one else present at the time of Edward's birth. Since his birth Edward has lived with me continuously, and during all this time we have lived at Whittier.

I have a son by the name of John Joseph Phelan.

Q. Do you know whether John Joseph Phelan had for any period of time regarded July 22nd as his birthday—

Mr. Lawson: Just a minute.

Mr. Dockweiler (continuing): —instead of his real birthday, June 22nd?

Mr. Lawson: Your Honor, I object to that as incompetent, irrelevant and immaterial.

Mr. Palmer: Leading and suggestive.

Mr. Lawson: And leading and suggestive, and calling for a conclusion of the witness.

A. I do.

The Court: Wait a minute. The objection will be sustained.

Mr. Dockweiler: Exception.

Q. Do you know whether your son, John Joseph Phelan, for any period of time had mistakenly regarded a certain day as a birthday?

Mr. Lawson: Just a minute now; don't answer that. Objected to on the same grounds, Your Honor.

The Court: The objection will be sustained.

Mr. Dockweiler: Exception. Cross-examine.

(Testimony of Mrs. Mary Phelan.)

Cross-Examination

By Mr. Lawson:

I will give the birthdays of each one of my children. My oldest, Dan Phelan, was born June 10th, 1874; Nellie Phelan was born October 28th, 1875; John Joseph was born on June 22nd, 1877; Annie Phelan was born on April 30th, 1880; Thomas Phelan was born on March 5th, 1882; Billie was born on March 6th, 1884; and Ed was born on March 13th, 1886. I have one more which is not on my record. I did not keep track of her age for she had not baptism; she didn't live long. I don't remember the year that she was born; I didn't keep track of it. I don't remember when she was born, but that is the record of the birthdays of all the children I have had.

I remember that Ed was born on March 13th, 1886; that is borne on my memory. I remember the circumstances when he was born. There was the midwife, Mrs. Martinez and myself present. I remember independently of everything else that his birthday was March 13th, 1886. The day that Ed was born I guess that my husband was around the house. I couldn't tell you where he was. I know he was around the house somewheres, but he was not in the bedroom where the baby was born. I know that Edward was born March 13th, 1886, and I have always been under that impression and always will be, and have never acted any differently or said differently. I have always held him out as having been born March 13th, 1886. I never gave any other date. I always gave March 13th, 1886. Nobody ever asked me anything about it.

(Testimony of Mrs. Mary Phelan.)

I did not tell anybody because nobody asked me. I never had any occasion to tell his birthday.

Q. Whenever you had occasion to?

A. I never had any occasion.

Q. Never had any occasion?

A. No, sir; never.

Q. Never had any occasion to put down his birthday?

A. Until four years ago, my son came there, wanted his birthday, and he for his long lifetime—

Q. Now, just a moment. Just answer the question, Mrs. Phelan.

A. Yes, sir.

Q. You say that four years ago was the first time that you ever had occasion to give the birthday of Edward to anybody else; is that right?

A. Four years ago my son—

Mr. Dockweiler: She didn't say anything of the kind.

Q. By Mr. Lawson: Answer the question yes or no. Read the question.

(Last question read by the reporter.)

A. Yes, sir.

Q. That is the first time?

A. That is the first time.

I never told anybody what his birthday was before that time. I never was asked and I never told anybody else and never made a statement. I am positive of that.

(Counsel handing witness petition to set aside home-
stead.)

(Testimony of Mrs. Mary Phelan.)

That looks like my signature on the document you handed me. It is not like I write now. It looks like it at that time. I don't know when my husband made his will. If it is set out in that paper that at the time of my husband's death on June 1st, 1889, Edward F. Phelan was aged about two years, it is a mistake. Whoever made that document made a mistake. If I signed it somebody presented it to me and told me to sign it.

Mr. Dockweiler: Yes, Your Honor, that was signed by the witness.

That looks like my signature; it looks like it. They did not read it to me, and I did not know what was in it. Whoever wrote it did not know anything about it. That is my statement and my signature. The document is a typewritten document. I had six living children on June 4th, 1866, and my husband was mistaken when he stated in that document that his family consisted of a wife and five children, and the man who wrote the document was also mistaken when he set out the age of my son.

Thereupon the document was offered and received in evidence, marked Government Exhibit 2, and is as follows:

"In the Superior Court of the county of Los Angeles, state of California.

In the Matter of the Estate of Thomas Phelan, deceased.

"To the Honorable the Above-Entitled Court:

"The petition of Mary Phelan respectfully shows

that Thomas Phelan died on or about the 1st day of June, 1889, at the county of Los Angeles, state of California;

“That at the time of his death the said Thomas Phelan was a resident of the said county of Los Angeles, in said state, and left estate therein consisting of real and personal property;

“That the said deceased left a last will and testament, whereby and wherein he appointed your petitioner as the executrix thereof;

“That by an order of this court, which was duly made and given on the 9th day of January, 1890, the said last will and testament was duly admitted to probate, and letters testamentary thereon were ordered to be issued to your petitioner;

“That on the said 9th day of January, 1890, your petitioner duly qualified as such executrix, and letters testamentary on said last will and testament were in due form on said day duly issued to her, as such executrix, and she has ever since been and is now the duly appointed, qualified and acting executrix of the last will and testament of said deceased;

“That on or about the 20th day of January, A. D. 1873, the said Thomas Phelan and your petitioner intermarried and were ever thereafter up to his said death husband and wife;

“That on the 4th day of June, A. D. 1886, the said Thomas Phelan duly signed and executed a declaration of homestead, in the words and figures following, to-wit:

“I do hereby certify and declare that I am married, and that I do now at the time of making this declara-

tion actually reside with my family on the land and premises hereinafter described; that my family consists of a wife and five children.

“That the land and premises on which I reside are bounded and described as follows, to-wit, lying and being in the county of Los Angeles, state of California:

“Commencing at the southwesterly corner of the lands now or formerly of J. F. Isbell, in said county, and running thence along the southwesterly line of the lands now or formerly of one Wade south $50^{\circ} 30'$ east to the northwesterly line of the certain lands now or formerly of Messrs. Tyler and Dunlap to the northerly line of the lands formerly of one King; thence northwesterly along the northeasterly line of said Kings lands and the northeasterly line of the lands now or formerly of Jacob Ott to the northerly corner of said Ott lands; thence northerly along the easterly line of certain other lands now or formerly of said Tyler and Dunlap to the southeasterly line of the Norwalk and Puente Mills road; thence easterly along the southeasterly line of the said road to the place of beginning, containing 101 acres of land, more or less, and being situated in Los Nietos township, in said county; said lands are further described as follows, consisting of two tracts:

“First: That certain tract consisting of about 61 acres of land, situated in said township and county, described in a certain deed, dated October 18th, 1873, executed by Pio Pico to Thomas Phelan, and recorded in the office of the county recorder of Los Angeles county, state of California, on the 20th day of October,

1873, in book 26 of deeds, at page 349 thereof, to which said deed and the record thereof, as aforesaid, reference is herewith had for a more particular description of said first tract.

“Second: That certain other tract containing about 40.66 acres of land, situate in said township and county, described as follows:

“Commencing at the southwesterly corner of the Strong 320 acre tract at a 4 by 4 redwood post, thence according to the true meridian (the variation being $14^{\circ} 13'$ east) north $39^{\circ} 30'$ east 22.72 chains; thence north $50^{\circ} 30'$ west 13.33 chains to a station; thence north $50^{\circ} 30'$ west 22.42 chains to a point; thence south $18^{\circ} 15'$ east 42.37 chains to the place of beginning.

“That it is my intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon and its appurtenances as a homestead, and I do hereby select and claim the same as a homestead.

“That the actual cash value of said property I estimate to be five thousand dollars.

(Signed) THOMAS PHELAN. (Seal)

In presence of

S. HALEY.

“That the said Thomas Phelan duly acknowledged the said declaration of homestead as a grant of real property before an officer entitled to take acknowledgments, and the said acknowledgment was duly certified in writing, attached to said declaration of homestead, on the said 4th day of June, 1886, and the said declaration together with the certificate of acknowledgment

was on the said 4th day of June, 1886, duly filed for record, and recorded at the request of the said Thomas Phelan in book 7 of declarations of homestead of married persons, at page 8 *et seq.* thereof, in the office of the county recorder of said Los Angeles county;

“That each and all of the statements in said declaration of homestead contained were, at the time of the making of said declaration, and now are, true;

“That all the land described in said declaration of homestead was acquired by the said Thomas Phelan after his marriage aforesaid with your petitioner, and all of the said property therein described was, at the time of the making and filing of said declaration of homestead, community property of the said Thomas Phelan and your petitioner, and ever thereafter up to the death of the said Thomas Phelan continued, subject to such declaration, to be such community property, and on the death of said Thomas Phelan the whole of the property described in said declaration of homestead vested in and became the property of your petitioner as the survivor;

“That on the 6th day of May, 1891, your petitioner made and returned to and filed in this court an inventory and appraisement, purporting to show the property belonging to the estate of said deceased; that at the time the said inventory was so made and filed, your petitioner, through inadvertence and mistake, and in ignorance of her rights to the said property described in said declaration of homestead, returned the said property in said inventory as part of the assets of said estate;

"That it was never her intention to relinquish any of her rights to any part thereof;

"That the said Thomas Phelan in and by his said last will and testament declared all of his property to be community property acquired since his marriage with your petitioner, and devised and bequeathed that all of his property should be divided among and between your petitioner and their children in the same ratable proportions and shares that it would have been by law, if he had died without a will;

"That at the time of his death, he left surviving him, as such devisees and legatees, or such heirs at law, your petitioner, who is his widow, and six children, to-wit: Daniel H. Phelan then aged about 14 years, Nellie R. Phelan then aged about 13 years, John J. Phelan then aged about nine years, Thomas F. Phelan then aged about seven years, and Edward F. Phelan then aged about two years.

"Wherefore, your petitioner prays that a time and place may be appointed for the hearing of this petition, and such notice may be given thereof as the court may deem proper, and that on such hearing an order may be made withdrawing from the administration upon the estate of Thomas Phelan, deceased, all of the property described in said declaration of homestead, and that the same may be set off to your petitioner as the owner thereof; and that such other and further or different order may be made as to the court may seem meet and proper.

"Dated Los Angeles, Cal., Feby. 9th, 1892.

(Signed) MARY PHELAN."

A. W. HUTTON,

Atty. for Petitioner.

"State of California, County of Los Angeles—ss.

"Mary Phelan, being duly sworn, deposes and says that she is the petitioner named in the foregoing petition in the above entitled matter; that she has heard read the foregoing petition and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief, and as to those matters that she believes it to be true.

MARY PHELAN."

Subscribed and sworn to before me this 9 day of Feby., 1892.

T. H. WARD, Clerk.

By A. W. Seaver, Deputy.

(Endorsed:) "Filed Feby. 10, 1892. T. H. Ward, clerk; by A. W. Seaver, deputy."

The names of my children who were living at home at the time that homestead was filed on June 4th, 1886, are Daniel, Nellie, Joe, Annie, Tom and Ed. William was dead at that time. Annie was alive at that time. William died before my husband's death. I did not keep any track of the time of his death. I don't remember the date, but it was before my husband's death. My husband died June 1st, 1889.

Whereupon, the jury was duly adminished and adjournment was taken until two o'clock p. m. At two o'clock p. m., court reconvened, and the jury being present, the proceedings of the trial were resumed.

(Testimony of Mrs. Mary Phelan.)

Mrs. Mary Phelan recalled.

Cross-Examination

resumed.

By Mr. Lawson:

I am now drawing a pension from the government. I don't remember where I made the application. I have been working at it ever since my husband died. I have made several applications but I don't remember how many. I tried it a long time and then I stopped for two or three years. I couldn't get it, and then the man back in Washington wrote to me. I don't remember when I finally got it. I couldn't say whether it was eight years ago or not. I don't remember when I first made the application. I don't remember when I made it. I have made several applications.

Q. Isn't that your signature (exhibiting document to witness)?

A. It looks like it, but I couldn't say whether it is or not.

Q. To the best of your recollection that is your signature?

A. It doesn't look like the writing that I write now.

Q. But it was the writing you wrote at that time?

A. It might have been.

Q. It might have been?

A. Yes, sir.

Mr. Palmer: You had better identify that, Mr. Lawson.

Mr. Lawson: This document is submitted—

Mr. Palmer (interposing): Let the reporter identify it as the one you just asked her about.

(Testimony of Mrs. Mary Phelan.)

The Court: What exhibit is it? Let the clerk identify it.

Mr. Lawson: Exhibit 3, Your Honor, for identification.

The Court: That is what you just submitted to her just now?

Mr. Lawson: It is the one I just submitted to her, Your Honor, yes.

The Court: Let it be marked Exhibit 3.

(The document so offered and identified was thereupon marked "United States Exhibit No. 3.")

Q. By Mr. Lawson: Isn't this your signature? (Exhibiting document to witness.)

A. I will have to say as I did to the other one, it looks like my signature, but I can't remember signing it.

Q. It looks like your signature?

A. Yes, sir.

Q. And that one (exhibiting another document to witness).

A. It is something similar.

Q. That is your signature?

A. It is something similar to the other.

The Court: Do you think they are your signatures or not? What is your impression about it?

The Witness: It was years ago. It may be my signature.

The Court: What is your impression about it? Do you think it is or is not your signature?

The Witness: It looks something like my signature.

The Court: That is not the question. Do you think

(Testimony of Mrs. Mary Phelan.)

it is your signature or do you think it is not your signature?

Mr. Dockweiler: This is no original document.

Q. By Mr. Lawson: Is that or is it not your signature?

A. It looks like mine, but I couldn't say. I don't know whether it is or not.

Mr. Lawson: I submit this also for identification.

The Court: It will be No. 4 for identification.

(The document so offered and identified was thereupon marked "United States Exhibit No. 4.")

Mr. Lawson: Your Honor, may we now offer these two exhibits, marked "Exhibits 3 and 4 for Identification," as evidence?

Mr. Dockweiler: Let us take one at a time.

The Court: Take No. 3.

Mr. Dockweiler: Take No. 3, yes. The document that is marked Exhibit No. 3 is dated October 10, 1917. That is the certificate. We object to it upon the ground that the same is incompetent, irrelevant and immaterial and that no proper foundation has been laid therefor.

The Court: Just pass it up and let me see it. Mr. Lawson, will you kindly step up here, please?

(Mr. Lawson thereupon steps to the bench.)

The Court: The objection will be overruled.

Mr. Dockweiler: I note an exception.

Mr. Lawson: I will now read the record.

Mr. Dockweiler: What exhibit is that?

The Court: Exhibit No. 3.

(Testimony of Mrs. Mary Phelan.)

Mr. Lawson: Exhibit No. 3, yes. (Reading.)
"Deposition 'A.' Case of Mary Phelan, No. 411,751.
On this 10th day of November, 1909, at 2 miles from
Whittier, county of Los Angeles, state of California,
before me, F. W. Tuckerman, a special examiner of
the bureau of pensions, personally appeared Mary
Phelan, who, being by me first duly sworn to answer
truly all interrogatories propounded to her during this
special examination of aforesaid claim for pension,
deposes and says:

I am 58 years of age; my business address is Whittier, California, R. F. D. No. 2, box 82, occupation farming. I am the widow of Thomas Phelan, who was a soldier in a Vermont regiment, but I do not remember the regiment and company. I never had his discharge papers. I never saw my husband have it. I have heard him talk of his army experience, but do not remember the name of his officers. Ed. Powers, now dead, who used to be a ranch hand on the place for my husband and for me was a soldier and drew a pension and he remembered the regiment and company my husband served in, though they were not in the same organization. My husband, Thomas Phelan, died right here at home on June 1st, 1889. He took cold about a year and a half before he died, and it turned into consumption, which caused his death. My husband did not draw a pension. He never said whether he applied for a pension. I made several applications for pensions. I do not know how many. The applications now shown me, dated October 12th, 1889, May 12th, 1908, and August 15th, 1890, bear my signatures

(Testimony of Mrs. Mary Phelan.)

and were executed by me before the several officers named therein, and the witnesses named were present at the several dates of execution thereof. My maiden name was Mary Ryan. I was married to Thomas Phelan at the old Plaza church on January 20th, 1873, by Father Mora. I had not been previously married. I was born August 21, 1851, at Templemore, Ireland, so I was 21 years old when I married. Thomas Phelan had not been previously married.

I had known him only about six months before our marriage. I got acquainted with him through Sister Schoolastica of Los Angeles, now dead, who knew him a long time. He was born in Ireland and came to America at an early age. His parents are dead. He has one brother and one sister living. The brother is William Phelan, who lives near Jacksonville, Illinois, about six miles in the country. I do not know whether his post office address is Jacksonville or not. He is familiarly called "Uncle Billy," and is well known. The sister is Mrs. Allan Phelan, 967 Church street, San Francisco, California. That is all the immediate relatives he has in the United States. All the rest are dead. I do not know whether my husband enlisted more than once. I never heard him say, or if I did, I do not remember it. I do not know of any one who knew my husband in early years, aside from his brother and sister, and consequently cannot refer to any others for previous knowledge as to whether he enlisted more than once, and as to his non-prior marriage. I left my home in Ireland in March, 1872. I landed in New York and came direct to Los Angeles

(Testimony of Mrs. Mary Phelan.)

by way of San Francisco. I came to an aunt of mine, Mrs. Wade, now dead. I landed in Los Angeles in May, and was married the following January. The only persons living who knew me before my marriage that I can think of are Mrs. Alice Nicholson and Mrs. Abbie Lynch. My husband, Thomas Phelan, and I lived together as husband and wife until he died. We were not separated nor divorced. I have not remarried since my husband, Thomas Phelan, died. We had six children living when my husband died, and we had lost one before my husband died. The names and dates of birth are as follows: I have them recorded, Daniel Hatchett, born June 10th, 1874; Nelly Rosa, born September 28, 1875; John Joseph, born June 22nd, 1877; Annie Winifred, born April 30th, 1880; Thomas Francis, born March 5th, 1882; Willie Bernard, born March 6th, 1884; Eddie Henry, born July 13th, 1886. All of the above named were born here on the home place. The above record is in my family Bible. (But the publication not shown in Bible. F. W. T.) Of the above named, Willie died October 10th, 1885, before his father died. Annie W. died November 13th, 1900, as shown by my Bible records (copied from the record. F. W. T.). We had also a child named Mary who died in 1879 when one day old. John Joseph's name was written Juan Jose in the baptismal record, but his name is John Joseph.

James Phelan, mentioned in my first application for pension, was not my son nor the son of my husband, but the son of my husband's brother, Daniel Phelan, who was a widower, and who died shortly before my

(Testimony of Mrs. Mary Phelan.)

husband died, and we thought of adopting him. Daniel Phelan was not a soldier. I do not know the pension law and supposed he was entitled with the rest of the children. All the children are living except Mary, Annie and Willie. My husband contracted the disease of which he died right here a year and a half before he died. I cannot prove that he contracted this fatal disease in the army. I never intended to state that he contracted his fatal disease in the army, if it is so stated in my first application. I do not so understand it. The officers did not read it to me. That which appears to be a joint affidavit of Edward W. Powers and J. C. Hyatt I believe to be the statement of Edward W. Powers. Powers knew my husband before I was married. He lived here on our place as a laborer during my husband's life, and for some years thereafter, until he went to the soldiers' home, where he died. J. C. Hyatt did not live there. (Signed) Mary Phelan, deponent.

Subscribed and sworn to before me this 10th day of November, 1909, and I certify that the contents were fully made known to deponent before signing. F. W. Tuckerman, Special Examiner."

The following deposition is not pertinent at this point, and with your permission, Mr. Dockweiler, I will submit that as read. This is duly certified to.

Mr. Dockweiler: What does the other refer to?

Mr. Lawson: If you want it read, I will read it. It just refers to the property which she has.

Mr. Dockweiler: No, I do not care about it.

(Testimony of Mrs. Mary Phelan.)

Mr. Lawson: This is duly certified to by the commissioner.

“Department of the Interior
Pension Bureau

Washington, D. C., October 10, 1917.

I, G. M. Saltzgaber, Commissioner of Pensions, and custodian of the records of the Bureau of Pensions, do hereby certify that the attached seven pages are true photostat copies of a deposition made by Mary Phelan, November 10, 1909, in connection with her claim for pension as widow of Thomas Phelan, Co. F, 12th Vt. Mil. Inf., since allowed by certificate number 697667, before F. W. Tuckerman, then duly qualified as a special examiner of the Bureau of Pensions.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the Pension Bureau to be affixed, the day and year above written.

G. M. SALTZGABER,
Commissioner of Pensions.”

Mr. Lawson: Your Honor, I submit these other applications as evidence, as Exhibit Number 4.

The Court: Exhibit 4:

(The documents so offered and identified were thereupon marked: “United States Exhibit Number 4.”)

Mr. Dockweiler: We object to the introduction of Exhibit Number 4 on the ground that the same is incompetent, irrelevant and immaterial, no sufficient foundation having been laid therefor. Of course, it is stipulated that these documents, upon their face, do not

(Testimony of Mrs. Mary Phelan.)

appear to be original documents, but appear to be what are known as photostats, whatever that may be.

Mr. Lawson: The certificate on the outside clearly indicates the character of the copy. It is a photostatic copy of the written record.

The Court: That raises a new question to me. I do not know anything about it.

Mr. Dockweiler: Your Honor, I assumed, of course, that the court had looked at the record. It is in now, however.

The Court: This document number 4 seems to be of the same character.

Mr. Palmer: The deposition already introduced identifies this.

The Court: How is that, Mr. Palmer?

Mr. Palmer: I say the deposition which is introduced identified these copies and states in there that she did execute these.

Mr. Dockweiler: The record is made now.

The Court: The objection will be overruled.

Mr. Dockweiler: I note an exception.

Mr. Lawson (reading): "Widows' declaration for pension or increase of pension. This must be executed before a court of record or some officer thereof having custody of the seal.

State of California, County of Los Angeles—ss.

"On this 12th day of October, A. D. one thousand eighteen hundred and eighty-nine, personally appeared before me, clerk of the Superior Court of record within and for the county and state aforesaid, Mary Phelan, aged 36 years, who, being duly sworn according to

(Testimony of Mrs. Mary Phelan.)

law, makes the following declaration in order to obtain the pension provided by acts of Congress granting pensions to widows: That she is the widow of Thomas Phelan, who enlisted under the name of Thomas Phelan in company of the Seventh Regiment, Vermont Infantry, in the war of the rebellion, who died of disease of the lungs (which he had contracted in the army and line of duty), at Los Nietos, Los Angeles county, California, on the first day of June, A. D. eighteen hundred and eighty-nine; that she was married under the name of Mary Ryan to said Thomas Phelan on the 20th day of January, A. D. 1873, by Reverend Father Marah, C. P., at Los Angeles, California, there being no legal barrier to such marriage; that neither she nor her husband had been previously married (that neither herself nor her late husband had been previously married); that she has to present date remained his widow; that the following are the names and dates of birth of all his legitimate children yet surviving who were under 16 years of age at father's death, viz.:

1. Daniel Phelan, of soldier, by applicant, born June 10, 1874.

2. Nellie Phelan, of soldier, by applicant, born September 28th, 1875.

3. John Phelan, of soldier, by applicant, born June 22, 1877.

4. James Phelan, of soldier, by applicant, born February 26th, 1879.

5. Annie Phelan, of soldier, by applicant, born April 30th, 1880.

(Testimony of Mrs. Mary Phelan.)

6. Tommie Phelan, of soldier, by applicant, born March 5, 1882.

7. Willie Phelan, of soldier, by applicant, born March 6, 1884.

8. Eddie Phelan, of soldier, by applicant, born July 13, 1886.

That she has not in any manner engaged in nor aided or abetted the rebellion in the United States; that no prior application has been filed by either the soldier or herself, so far as she knows; that she hereby appoints, with full power of substitution and revocation, James Thomas Turner of Washington, D. C., her attorney to prosecute the above claim; that her residence is number, Los Nietos, Los Angeles county, California, and her post office address is the same. Mary Phelan. Signature of claimant. 2. W. H. Josleyn. 3. Mark Anthony. Two witnesses who can write, sign here.

"There personally appeared W. H. Josleyn, residing at Whittier, California, and Mark Anthony, residing at the same place, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they were present and saw Mary Phelan, the claimant, sign her name to the foregoing declaration; that they have every reason to believe from the appearance of said claimant and their acquaintance with her that she is the identical person she represents herself to be; and that they have no interest in the prosecution of this claim. 1. W. H. Josleyn. 2. Mark Anthony. (Signatures of affiants.)

"Sworn to and subscribed before me this 12th day

(Testimony of Mrs. Mary Phelan.)

of October, A. D. 1889, and I hereby certify that the contents of the above declaration, etc., were fully made known and explained to the applicants and witnesses before swearing, and that I have no interest, direct or indirect, in the prosecution of this claim. (Signed C. H. Dunsmoor, clk. By A. B. Whitney, deputy.)”

“Act of June 27th, 1890. Declaration for widow’s pension. To be executed before a notary public, justice of the peace or any officer competent to administer oaths who has a seal.

“State of California, County of Los Angeles—ss.

“On this 15 day of August, A. D. one thousand eighteen hundred and ninety, personally appeared before me, J. F. Meredith, a county clerk, within and for the county and state aforesaid, Mary Phelan, aged 37 years, a resident of Los Nietos, county of Los Angeles, state of California, who being duly sworn, according to law, declares that she is the widow of Thomas Phelan, who enlisted under the name of Thomas Phelan on the 23rd day of August, A. D. 1863, in company F, 12th Vermont Infantry, some time in July, 1863, and served at least 90 days in the late war of the rebellion, who was honorably discharged and died of lung disease, June 1st, 1889; that she was married under the name of Mary Ryan to said Thomas Phelan on the 20th day of January, 1873, by Bishop Mora at Los Angeles, California, there being no legal barrier to said marriage; that she has not remarried since the death of the said Thomas Phelan; that she is without other means of support than her daily labor; that names and dates of birth

(Testimony of Mrs. Mary Phelan.)

of all the children now living under sixteen years of age of the soldier are as follows:

Daniel, born June 10, 1874.

Nellie, born September 28th, 1875.

John, born June 22, 1877.

Willie, born March 6, 1884.

James, born February 26, 1879.

Annie, born April 30, 1880.

Tommie, born March 5, 1882.

Eddie, born July 13, 1886.

"That she has heretofore applied for pension and the number of her former application is; that she makes this declaration for the purpose of being placed on the pension roll of the United States, under the provisions of the Act of June 27th, 1890.

"She hereby appoints with full power of substitution and revocation J. Thomas Turner, attorney-at-law, Washington, D. C., her true and lawful attorney to prosecute her claim, the fee to be \$10.00 as prescribed by law; *ther* her post office address is Los Nietos, county of Los Angeles, state of California. Mary Phelan, (claimant's signature.) 1 Daniel Phelan. Reyes A. Serrano. (Two witnesses who write, sign here.)"

"Also personally appeared Donald Phelan, residing at Los Angeles, and Reyes A. Serrano, residing at Los Angeles, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they were present and saw Mary Phelan, claimant, sign her name (or make her mark) to the foregoing declaration; that they have every

(Testimony of Mrs. Mary Phelan.)

reason to believe from the appearance of said claimant and an acquaintance with her of three years and ten years, respectively, that she is the identical person she represents herself to be; and that they have no interest in the prosecution of this claim. (Signed) Daniel Phelan, Reyes A. Serrano.

"Sworn to and subscribed before me this 15th day of August, A. D. 1890, and I hereby certify that the contents of the above declaration, etc., were fully made known and explained to the applicant and witnesses before swearing, including the words 'Notary Public,' erased, and the word added, and that I have no interest, direct or indirect, in the prosecution of this claim. J. M. Meredith, clk., by A. B. Whitney, deputy.

"The Act of June 27th, 1890, required in widow's case.

1. That the soldier served at least 90 days in the war of the rebellion and was honorably discharged.

"2. Proof of soldier's death (death cause. Need not have been due to army service.)

"3. That widow is 'without other means of support than her daily labor.'

"4. That widow was married to soldier prior to June 27th, 1890, date of the act.

"5. That all pensions under this act commence from date of receipt of application (executed after the passage of act) in Pension Bureau."

Act of April 19, 1908. Declaration for widow's pension.

(Testimony of Mrs. Mary Phelan.)

State of California, County of Los Angeles—ss.

“On this 12th day of May, A. D. nineteen hundred and eight, personally appeared before me, a notary public within and for the county and state aforesaid, Mary Phelan, aged 67 years, a resident of Whittier, county of Los Angeles, state of California, who, being duly sworn according to law, makes the following declaration in order to obtain pension under the provisions of the Act of Congress approved April 19, 1908.

“That she is the widow of Thomas Phelan who was enrolled under the name of Thomas Phelan on the 23rd day of August, 1862, in company F, 12th Vermont regiment and honorably discharged on the 1st day of July, 1863, having served 90 days or more during the civil war. He was never in the military or naval service of the United States; that she was married under the name of Mary Ryan to said soldier at Los Angeles, on the 20th day of January, 1873, by Father Mora; that there was no legal barrier to the marriage; that she had not been previously married; that the soldier had not been previously married; that the said soldier died June 1, 1889, at Whittier; that she was not divorced from him; that she has not remarried since his death; that the names and dates of birth of all the children of the soldier now living and under 16 years of age at the date of the soldier's death, are as follows: (If there was a prior marriage of either the date and place of death or divorce of former consort or consorts, should be stated.) (If the soldier left no children, the claimant should so state.)

(Testimony of Mrs. Mary Phelan.)

Daniel H. Phelan, born June 10, 1874, at Whittier;

Nellie B. Phelan, born September 28th, 1875, at Whittier;

John J. Phelan, born June 22, 1877, at Whittier;

Thomas F. Phelan, born March 5, 1882, at Whittier;

Edward H. Phelan, born July 13th, 1886, at Whittier;

That she has heretofore applied for a pension; that she hereby appoints I. A. Gangower of Washington, D. C., her true and lawful attorney to prosecute this claim and direct that the sum of \$10.00 be paid as fee for services rendered; that her post office address is Whittier, Los Angeles, California.

Attest. (Two witnesses sign here always.)

1. W. L. Hatton.

2. M. A. Chapman.

(Signed) Mary Phelan.

4th. (This jurat must always be filled in and signed by two witnesses.)

"Also personally appeared W. L. Hatton, residing at Whittier, California, and M. A. Chapman, residing at Whittier, California, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they were present and saw Mary Phelan, the claimant, sign her name (or make her mark) to the foregoing declaration; that they have every reason to believe, from the appearance of said claimant and their acquaintance with her of 1 years and 1 years, respectively, that she is the identical person she represents herself to be; and that they have

(Testimony of Mrs. Mary Phelan.)

no interest, direct or indirect, in the prosecution of this claim. (Signed)

1. W. L. HATTON.

2. W. A. CHAPMAN.

"Sworn to and subscribed before me this 12th day of May, A. D. 1908, and I do hereby certify that the contents of the foregoing declaration, etc., were fully made known and explained to the applicant and witnesses before swearing; that I have no interest, direct or indirect, in the prosecution of this claim. (Signed) S. W. Barton, official signature, notary public for the county of Los Angeles, state of California."

And below that the following:

"This application can be executed before a notary public, justice of the peace, or any officer authorized to administer oaths for general purposes."

"Proof of birth.

"State of California, County of Los Angeles—ss.

"In the matter of the claim for pension of Mary Phelan, of Los Nietos, Los Angeles county, California, widow of Thomas Phelan. Personally came before me a deputy county clerk in and for the aforesaid county and state, Joaquin Bot, and Mary Phelan, citizens of the county of Los Angeles, state of California, whose post office address is Los Nietos, Los Angeles county, California, and well known to me to be reputable and entitled to credit, and who, being duly sworn, declares in relation to aforesaid claim that the date of the births of the children of said soldier is as follows:

Daniel H., June 10, 1874;

Nellie R., September 28th, 1875;

(Testimony of Mrs. Mary Phelan.)

John J., June 22, 1877;

Annie W., April 30th, 1880;

Thomas F., March 5, 1882;

Edward H., July 13th, 1886.

(Signed) Joaquin Bot, Catholic Rector, San Gabriel Mission. (Signed) Mary Phelan.

"Sworn to and subscribed before me this day by the above named affiant, and I certify that I read said affidavit to said affiant, and acquainted her with its contents before she executed the same.

"I further certify that I am in no wise interested in said claim, nor am I concerned in its prosecution.

"Witness my hand and official seal this 31 day of October, 1892. (Signed) Sam. Kutz, deputy county clerk.

"Note: This should be sworn to before a clerk of court, notary public or justice of the peace. If before a justice or notary, then clerk of county court must add his certificate of character hereon and not on a separate slip of paper."

"Department of the Interior
Pension Bureau.

Washington, D. C., October 10, 1917.

I, G. M. Saltzgaber, Commissioner of Pensions, and custodian of the records of the Bureau of Pensions, do hereby certify that the attached eight pages are true photostat copies of three applications for pension made October 12, 1889; August 15, 1890, and May 12, 1908, respectively, and an affidavit made by Joaquin Bot and Mary Phelan on October 31, 1892, and filed by Mary Phelan as widow of Thomas Phelan, late of Co. F,

(Testimony of Mrs. Mary Phelan.)

12th Vt. Mil. Inf., now on file in the Bureau of Pensions, and which claim was allowed by certificate number 697667.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the Pension Bureau to be affixed, the day and year above written.

G. M. SALTZGABER,
Commissioner of Pensions."

Q. By Mr. Lawson: I also want to call your attention, Mrs. Phelan, in Government's Exhibit No. 4, the first page, the entries of the births of your children, if that is not in your own handwriting?

A. I don't know.

Q. Is, or is that not, your handwriting?

A. I don't know; I couldn't say; I don't remember writing that.

Q. Does it appear to be your handwriting?

A. No.

Q. You deny that is your handwriting?

A. Well, I don't know; it is so long ago since I wrote it I can't say.

Q. Doesn't that look like your "M"?

A. I don't remember.

Q. Isn't that the same kind of "P" you make?

A. I don't remember; I don't remember ever writing it.

Q. Isn't that the same kind of an "E" you make?

A. I don't know.

Mr. Dockweiler: I object to that method of cross-examination.

(Testimony of Mrs. Mary Phelan.)

The Court: I think, Mr. Lawson, you will have to show me some authorities on the subject. You can ask her if she made certain statements in that document.

Q. By Mr. Lawson: I ask you again, Mrs. Phelan, if that is not your handwriting?

A. I don't remember; I can't say.

* * * * *

The Court: Well, you may ask her if it is a photographic copy of her handwriting.

Q. By Mr. Lawson: Is that a photographic copy of your handwriting?

A. I don't remember—

Mr. Dockweiler: Now, Mrs. Phelan, one minute. We object to the question as incompetent, irrelevant and immaterial and not proper cross-examination, and assumes a fact not proven.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

Q. By Mr. Lawson: Is that your handwriting?

A. I don't remember; I don't remember whether I wrote it.

The Court: That was not the question I gave you leave to ask.

Q. By Mr. Lawson: Is that a photographic copy of your handwriting?

A. I can't remember.

Mr. Dockweiler: One minute now. I renew my objection.

The Court: Well, the objection will be overruled to that.

Mr. Dockweiler: Exception.

(Testimony of Mrs. Mary Phelan.)

After considerable discussion between court and counsel as to the admission of certain evidence, the court duly admonished the jury and took a recess for five minutes. At the expiration of said five minutes the court reconvened, and the jury being present, the proceedings of the trial were resumed.

(Testimony of Claya Taylor for the Government.)

Claya Taylor, a witness called on behalf of the Government, out of order, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lawson:

My name is Claya Taylor. I am a clerk to the United States Attorney. My duties in that office are stenography, and I partially have custody of the filing of papers, etc., and I send telegrams.

Q. Do you recall having sent that telegram (handing paper to the witness)?

Mr. Dockweiler: One minute. Let's see it. (Examining telegram.)

Mr. Dockweiler: What is the question, Mr. Reporter?

(Last question read by the reporter.)

Mr. Lawson: I will just withdraw that question, if Your Honor please.

Can you identify that telegram, Miss Taylor, as having been sent from the office of the United States Attorney?

A. It is a carbon of the telegram.

(Testimony of Claya Taylor.)

Mr. Dockweiler: One minute. What is that question?

(Last question read by the reporter.)

Mr. Dockweiler: We object to that question upon the ground that it is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: No foundation laid for it. Exception.

Q. By Mr. Lawson: Just answer the question.

A. I recognize it as a carbon copy of a telegram sent from the office.

Q. Do you remember that telegram having been sent?

Mr. Dockweiler: Same objection, Your Honor.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

Mr. Lawson: It won't be necessary to answer that question. Just withdraw that question. It has already been identified. We offer this as Exhibit No. 5.

Mr. Dockweiler: We object to the offer upon the ground it is incompetent, irrelevant and immaterial and no foundation therefor.

The Court: The objection will be overruled.

Mr. Dockweiler: No sufficient foundation therefor has been laid, and not the best evidence.

The Court: Overruled.

Mr. Dockweiler: Exception.

Mr. Lawson (reading): "Western Union telegram. Charge Government rate. Los Angeles, California, 10-9-17.

(Testimony of Claya Taylor.)

Attorney General,

Washington, D. C.

Send to special examiner Uline Los Angeles original papers proving age and birth Edward Phelan in pension application by Mary Phelan include any other evidence in pension files papers identified telegram October 9th from Saltzgiber trial October sixteenth Rush. O'Connor U S Atty."

Q. Can you identify this letter, Miss Taylor, as having been received in the office of the United States Attorney?

A. I can.

Mr. Dockweiler: Well now—is there an answer to that?

(Last answer read by the reporter.)

Mr. Dockweiler: Why, Your Honor, I would like to move to strike out the answer in order to enable me to get in the objection.

The Court: Did she answer this last question? It will be stricken out.

Mr. Dockweiler: Yes. We object to that question on the ground that the same is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: And leading and suggestive.

The Court: Overruled. Now, you may answer the question.

A. I do recognize it; yes.

Mr. Lawson: Offer this as Government's Exhibit No. 6.

(Testimony of Claya Taylor.)

Mr. Dockweiler: Let's see it. (Receiving and examining letter.) We object to the offer upon the ground that the same is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

"Department of Justice, RLD-LP

Bureau of Investigation,

Washington, October 10, 1917.

"John R. O'Connor, Esquire, Assistant United States Attorney, Los Angeles, California.

"Dear Sir:

"Referring to your telegram to me of today, I enclose herewith copy of the baptismal and death records of the Cathedral of St. Vibiana, relative to the baptism of Edward Henry Phelan, copy of a deposition made by Mary Phelan on November 10, 1909, in connection with her claim for pension as widow of Thomas Phelan, and copy of three applications for pension made October 12, 1889, August 15, 1890, and May 12, 1908, by Mary Phelan, certified under the act of August 24, 1912, 37 Statutes at Large, page 498, section 3.

"The Commissioner of Pensions considered it impracticable to send the original papers. I believe, however, that the certified copies will serve your purpose equally well.

Very truly yours,

A. B. BIELASKI,

Chief."

(Enclosures) RLD"

(Testimony of Mrs. Mary Phelan.)

Mrs. Mary Phelan, recalled.

Mr. Dockweiler: Before any questions are put, Your Honor, I wish Your Honor would personally read this letter.

The Court: That is the one just admitted?

Mr. Dockweiler: Yes. The statements therein contained are hearsay, Your Honor. That is not a statement of the Commissioner of Patents.

Mr. Palmer: I don't know what the Commissioner of Patents would have to do with it.

Mr. Dockweiler: Or Pensions, rather. And furthermore, there is no statement that the papers cannot be sent or transmitted.

Mr. Palmer: There is a statement that they will not be, however.

The Court: Well, the ruling will stand concerning the letter. Of course, the court must take judicial notice that Bielaski is the chief of the Pension Department, and his superior, of course, is the Commissioner of Pensions. Bielaski is the man who should have charge of these things and send them out, but he should do it only with permission of his chief or senior officer. Let the ruling stand.

Mr. Dockweiler: Exception.

Mr. Lawson: Cross-examine—or, that is all, Mrs. Phelan.

The Court: Is that all of this witness?

Mr. Dockweiler: No, just a minute, Your Honor. That is all for the time being, Your Honor. Mrs. Martinez.

**(Testimony of Mrs. Maria Jesus de Martinez on
Behalf of Defendant.)**

Mrs. Maria Jesus de Martinez, a witness called on behalf of defendant, having been first duly sworn, through the interpreter, Ralph Dominguez, testified as follows:

Direct Examination

By Mr. Dockweiler:

My name is Maria Jesus de Martinez, and I reside at Los Nietos, and have resided in Los Angeles county since I was three years old. I am acquainted with the defendant, Edward Phelan, and have been since he was born. I know his mother, Mary Phelan, and have known her since we were first married together, since we were young girls.

I was present at the birth of Edward Phelan. I have four children of my own, two boys and two girls. There was also present at the birth of Edward Phelan a lady that helped her; they called her Guara. (By the interpreter.) It means blondy. She has been dead over twenty years. Aside from the midwife, Mrs. Phelan and myself, there was no one present at the defendant's birth. I don't remember the month that Edward was born. I had a child born a comparatively short period before Edward was born. Gaspar was born nearest Edward. I don't know what year he was born, but he is going on thirty-three years. Gaspar was born on the 6th day of January. Gaspar was born before Edward; he is older. I think he, my boy, is a year and a month or two older than Edward. My son was born January 6th, and he is about thirty-three years of age. My boy is about a year and two

(Testimony of Mrs. Maria Jesus de Martinez.)

months older than Edward, one year and a month or two, more or less.

Cross-Examination

By Mr. Lawson:

I have four children. I cannot give the names and birthdays of each. I don't remember as to the dates. I know the names of them, not the years, but I can tell the months by having them in my head. I don't remember the year Gaspar was born in, but he is going to be thirty-three next January, because he told me so, and I have it on a memorandum. My boys told me their ages. Gaspar told me his, but I did not pay any attention what year. Gaspar told me when he was born. Each of my children did not tell me when they were born, only Gaspar. I know that he was born January 6th, I know it in my head, because he is the smallest of the family. I can't tell you when Gaspar told me he was born January 6th, but it was since I was subpoenaed in this case. It was within the last year, within the last half year, more or less. I don't know whether it was within the last three months, but it was not since I was subpoenaed in this case. Gaspar and Edward have been for many years under the impression that they were about the same age. A long time ago Gaspar took a memorandum of it. He did it for many years. The father used to mark it down as they were born. I was born the 4th of July, 1854. My father used to call me Fourth of July. I have a family record of the births of my children, but I have it in my house. It is on a piece of paper. I have had it thirty years and over. It is in a geography that is about as old as I am.

(Testimony of H. E. Collins on Behalf of the Defendant.)

H. E. Collins, a witness called on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

My name is H. E. Collins, and I reside at Riveria. I have resided in Los Angeles county about twenty-eight years and am a horticulturist and manufacturer of fertilizers. I am acquainted with the defendant, Edward Henry Phelan, and have known him possibly eighteen years. I am acquainted with his reputation in the community where he lives for peace, quiet, truth and veracity, and it is most excellent.

(Testimony of T. L. Gooch on Behalf of the Defendant.)

T. L. Gooch, a witness called on behalf of defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

My name is T. L. Gooch, and I reside near Riveria, and have resided there for forty-seven years. I know Edward H. Phelan, and have known him all his life. I am a horticulturist and have been engaged in that business thirty-five or forty years. I am acquainted with the reputation of the defendant for truth and veracity and peace and quiet in the neighborhood and community in which he lives, and that reputation is good.

**(Testimony of Max Schwed on Behalf of the
Defendant.)**

Max Schwed, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

My name is Max Schwed, and I reside in this city and have resided in Los Angeles county for forty-eight years. I am retired now but used to be in the general merchandise business at Los Nietos, which is situated about a mile and a half from Riveria. It is in the same section. I am acquainted with the defendant and have known him since childhood. I know the reputation of the defendant in the community where he lives for truth, veracity, and peace and quiet, and that reputation is good.

Cross-Examination

By Mr. Lawson:

I am retired. I formerly ran a general merchandise store at Los Nietos. We used to keep everything, dry goods, groceries, and everything combined. I started the store in 1872. I also kept liquors and ran a saloon combined with the store.

**(Testimony of Mrs. Harriett W. R. Strong on
Behalf of Defendant.)**

Mrs. Harriett W. R. Strong, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

My name is Harriett W. R. Strong, and I reside near Whittier, in Los Angeles county, and have resided there continuously since 1888. I arrived in California earlier than that, in 1878. I am acquainted with the defendant. I know him as a member of the family that has grown up there. I have known him since 1888 and have known the entire family since 1888. I am acquainted with the reputation of the defendant, Edward Phelan, in the community in which he lives for truth and veracity and peace and quiet, and that reputation is good.

**(Testimony of A. H. Gregg on Behalf of the
Defendant.)**

A. H. Gregg, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

I reside near Whittier and have since 1881. I am a rancher and in the land business. I am acquainted with the defendant and have known him since he was a little child. I know the reputation of the defendant for truth and veracity and peace and quiet in the community in which he lives, and that reputation is very good.

(Testimony of George F. Prince on Behalf of the Defendant.)

George F. Prince, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

My name is George F. Prince, and I have resided in Los Angeles county for thirty years. I am a vegetable buyer for the California Vegetable Union. I am acquainted with the defendant, Edward H. Phelan, and have known him intimately for seven or eight years. I am acquainted with his reputation in the community in which he lives for truth and veracity and peace and quiet, and that reputation is good.

(Testimony of C. Sorenson on Behalf of the Defendant.)

C. Sorenson, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

My name is C. Sorenson. I am seventy-seven years old and reside about one mile west of Whittier. I have resided there permanently for forty-one years, and in Los Angeles county for fifty-one years. I am acquainted with the defendant, Edward Phelan, and have been since his childhood. I am acquainted with the defendant's reputation in the community in which he lives for truth and veracity and peace and quiet, and that reputation is very good.

(Testimony of O. M. Souden on Behalf of the Defendant.)

O. M. Souden, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dockweiler:

I am engaged in the banking business and have been for nearly eighteen years, in Los Angeles and in Whittier. I am acquainted with the defendant, Edward H. Phelan, and have been for about seventeen years. I am acquainted with his reputation in the community in which he resides for truth and veracity and peace and quiet, and that reputation is good.

Thereupon it was stipulated between Mr. Dockweiler and counsel representing the Government, as a matter of evidence, that the conscription act and registration act was adopted and enacted into law and approved May 18th, 1917, and that the proclamation of the President was issued under that act and pursuant to that act on the same date.

Whereupon Mr. Palmer presented the opening argument on behalf of the Government, at the conclusion of which the court, after duly admonishing the jury, took an adjournment until ten o'clock a. m., October 19th, A. D. 1917.

The court reconvened at the hour of ten o'clock a. m. on Monday, October 19th, 1917, and the jury being present, the proceedings of the trial were resumed.

Whereupon, Mr. Dockweiler presented his argument on behalf of defendant.

"The first witness called by the prosecution was a gentleman by the name of George T. Jeffries, deputy county recorder. He testified to nothing that is before you."

At the conclusion of Mr. Dockweiler's argument the court, after admonishing the jury, took a recess of five minutes, at the conclusion of which time the court reconvened, and the jury being present, the proceedings of the trial were resumed.

Whereupon Mr. Lawson presented the closing argument on behalf of the Government, and among other things, argued and stated to the jury as follows (quoting from closing argument of Mr. Lawson):

"Then Mr. Dockweiler said: 'Let us go bravely through the evidence.' And I want to say, Mr. Dockweiler, that you surely have valor; and I pay him tribute for the braveness with which he went to the evidence. And it did require a courageous man, gentlemen of the jury, to go through all of that evidence. And he did the best he could; he did as well as anybody could do, and he is a valorous man. He said certain witnesses testified to nothing. Of course. Why? Of course, because he would not let them. That is why they did not testify. Why the suppression of the facts, gentlemen of the jury? Why didn't they want these facts to get to you? And then he gets up and says they testified to nothing. It is only because of the power of counsel—"

"Mr. Dockweiler: May it please the Court, I now assign as error the remarks just made by the prose-

cuting counsel in commenting upon my effort, representing the defendant in this case, to keep out evidence that the court held was improper and thereby appealing to the prejudice and other instincts of the jury."

"Mr. Lawson: That remark—"

"Mr. Dockweiler: I assign it as error."

"The Court: Proceed with the argument."

"Mr. Lawson: That remark was referred to by Mr. Dockweiler. You said they didn't testify. And again I repeat, the reason they did not testify was because Mr. Dockweiler would not let them testify. Evidently you can draw from that only one conclusion that those facts were to be withheld from you—"

"Mr. Dockweiler: If the Court please, I want to assign the remarks just made by counsel since my first objection, as error, and I urge and assign them as error."

"The Court: The jury will not consider the remarks of the United States attorney, coming to a conclusion from this evidence. The jury have no right to consider any evidence that was excluded."

(INSTRUCTIONS REQUESTED BY DEFENDANT AND
REFUSED.)

Thereupon the defendant requested the court to give to the jury the instructions hereinafter immediately set out, which request was by the court refused as to each and every one of said instructions, to each and every one of which refusals the defendant duly excepted.

You are instructed that you cannot presume, conjecture, guess or arrive at any conclusion as to the age of the defendant, Edward H. Phelan, from the mere fact that he was baptized on the 8th day of August, 1886.

You are instructed that the law presumes the defendant innocent of the crime charged in the indictment and innocent of any crime whatsoever, and you are instructed that the presumption of innocence follows him throughout the trial in this case, and in your deliberations as to the guilt or innocence of this defendant you must take into consideration said presumption of innocence as a matter of evidence.

You are instructed that on June 4th, 1886, and at the time Thomas Phelan executed the declaration of homestead on the property near Whittier, where he was then residing, the law of the state of California did not require that he insert in such declaration of homestead the names of his children, the number of his children, or the ages of his children.

You are instructed that the law of the state of California has at no time required one declaring a homestead on property to insert in the declaration of homestead the names, ages or number of his children, or the dates of their birth.

The court instructs the jury that the law did not require a declaration of homestead to set forth the number of children, or their ages, possessed by the party making such declaration of homestead.

The law in a criminal case clothes the defendant with the presumption of innocence, and when proof tends to overthrow this presumption, and to fix upon

the defendant the presumption of guilt, the latter is permitted to support the original presumption of innocence by proof of good character. Such good character, when proven, is a circumstance tending in a greater or lesser degree to establish his innocence. It is of value not only in doubtful cases, but also when the testimony tends very strongly to establish the guilt of the accused. When proven, it is a fact in the case, and it is not to be put aside by the jury in order to ascertain that the other facts and circumstances considered in themselves do not establish the defendant's guilt beyond a reasonable doubt, but such good character, if proven, should be considered by the jury in connection with all of the testimony in the case, and not independently thereof, and the guilt or innocence of the defendant determined from all the testimony in the case, and such good character, if proven, should be weighed as any other fact established, and may, if proven, in itself be sufficient to raise a reasonable doubt as to the defendant's guilt in the minds of the jury.

The law in a criminal case clothes the defendant with the presumption of innocence, and when proof tends to overthrow this presumption, and to fix upon the defendant the presumption of guilt, the latter is permitted to support the original presumption of innocence by proof of good character. Such good character, when proven, is a circumstance tending in a greater or lesser degree to establish his innocence. It is of value not only in doubtful cases, but also when the testimony tends very strongly to establish the guilt of the accused. When proven, it is a fact in the case,

and it is not to be put aside by the jury in order to ascertain that the other facts and circumstances considered in themselves do not establish the defendant's guilt beyond a reasonable doubt, but such good character, if proven, should be considered by the jury in connection with all of the testimony in the case, and not independently thereof, and the guilt or innocence of the defendant determined from all the testimony in the case, and such good character, if proven, should be weighed as any other fact established, and may, if proven, in itself be sufficient to raise a reasonable doubt as to the defendant's guilt in the minds of the jury. If the jury find the evidence conflicting and doubtful as to the defendant's guilt, the importance which the jury are authorized to give to the evidence of good character is thereby increased.

In connection with what I have said on this subject you are further instructed that the evidence in this case stands undisputed that the defendant is a person of good character and enjoys a reputation in the community where he lives for truth, honesty and veracity. In addition to the evidence offered upon the subject, it was conceded by the council for the government that he is a person of good moral character and enjoys a good reputation in the community where he lives for truth, honesty and veracity.

You are instructed that if the defendant was over the age of 31 years on June 5th, 1917, or if he had reason to believe and did believe that he was over the age of 31 years on the said 5th day of June, 1917, you must acquit him.

You cannot convict the defendant of the crime

charged in the indictment if you believe from the evidence that he had reason to believe or did believe that he was not required to present himself for and submit to registration under and pursuant to the Act of Congress of May 18th, 1917.

You are instructed that the indictment charges, in substance, that Edward H. Phelan, being a person between the ages of twenty-one and thirty, to-wit, a person who had attained his twenty-first birthday and who had not attained his thirty-first birthday on the 5th day of June, 1917, and being a person required to register under and pursuant to the Act of Congress approved May 18th, 1917, entitled "An Act to Authorize the President to Increase Temporarily the Military Establishment of the United States," unlawfully did wilfully fail and refuse to present himself at the registration place in Los Nietos precinct, Los Angeles county, between 7 a. m. and 9 p. m. on said 5th day of June, 1917, and to submit himself for registration as in said Act provided; and in this respect I charge you that before you can convict the defendant of wilfully failing to present himself and submit to registration pursuant to said Act of Congress, you must believe from the evidence beyond a reasonable doubt that the said defendant, Edward H. Phelan, had not attained his thirty-first birthday on the 5th day of June, 1917, and that he knew said fact and fully understood said fact, and that, knowing and understanding that he had not attained his thirty-first birthday, and knowing and understanding that he was required to register pursuant to said Act of Congress, that he did wilfully fail and refuse to present himself for and

submit to registration as provided by said Act of Congress.

If, on the other hand, you believe from the evidence that the said Edward H. Phelan believed or had reason to believe that he had attained his thirty-first birthday on the said 5th day of June, 1917, and that he did not understand and believe that he was required to register under and pursuant to said Act of Congress on the said 5th day of June, 1917, then you must acquit him.

If you believe from the evidence that the defendant, on and throughout the 5th day of June, 1917, had reason to believe and did believe that he arrived at the age of 31 years of age on the 13th day of March, 1917, and that he had reason to believe and did actually believe, on and throughout the 5th day of June, 1917, that he was over 31 years of age, then I instruct you that you must acquit him.

I instruct you that the law presumes that the defendant in this case is innocent of the crime charged in the indictment, and that that presumption follows him throughout the trial, and in determining the innocence or guilt of defendant it is your duty to take into consideration the presumption of his innocence as a matter of evidence.

The fact that the defendant in this case has been indicted and crime charged against him does not raise any presumption in any way or manner whatsoever that he is guilty of the crime charged, or of any crime whatsoever, and in that regard you are instructed that the law presumes that the defendant is innocent of the crime charged in the indictment, and that said

presumption follows him throughout the trial of this case.

It is incumbent upon the government to prove beyond a reasonable doubt that the defendant is guilty of the crime charged in the indictment, and if after you have weighed the evidence there is a reasonable doubt in your minds as to the guilt of the defendant, it is your duty to acquit him.

If after weighing and considering the evidence according to the rules given you by the court for your guidance, there is any reasonable doubt in your minds as to whether the defendant is guilty or innocent of the crime charged in the indictment, it is your duty to render a verdict acquitting him of said crime.

You cannot convict the defendant of the crime charged in the indictment unless you are convinced by the evidence beyond a reasonable doubt that he is guilty of such crime.

You are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction upon your minds against a less number or against a presumption or other evidence satisfying to your minds; and in this connection I instruct you that a witness false in one part of his or her testimony is to be distrusted in others.

You are instructed that in determining the weight to be given to the testimony of a witness you will take into consideration the intelligence of the witness, the witness' bias or prejudice, if any, his or her manner on the witness stand, his or her apparent fairness or want of fairness, his or her means of observation and knowledge, and all matters, facts and circumstances

shown on the trial, including any evidence offered tending to impeach the reputation of the witness for truth and veracity in the neighborhood where he or she resides, bearing upon the question of the weight to be given to his or her testimony; and give to the testimony of each and every witness such weight as to you it may seem fairly entitled to.

You are the sole judges of the weight of the evidence and the credibility of the witnesses, and in determining the same, you may consider the interest, bias or prejudice of a witness, if any, and manner in which the witness testifies on the stand, his or her apparent fairness or want of fairness, his or her means of observation and knowledge, and all matters, facts and circumstances shown on the trial bearing upon the question of the weight to be given to his or her testimony.

You are instructed that the indictment in this case charges that Edward H. Phelan on June 5th, 1917, was a male person between the ages of twenty-one and thirty; and in this respect I charge you that the undisputed evidence in this case shows that Edward H. Phelan was not a person between the ages of twenty-one and thirty on June 5th, 1917, but that he was over thirty years of age on June 5th, 1917, and you are therefore instructed and directed to return a verdict acquitting the defendant of the crime charged in the indictment.

You are instructed that the government has wholly failed to prove that the defendant is guilty of the crime charged in the indictment, and you are therefore instructed to return a verdict acquitting him.

You are instructed to return a verdict acquitting the defendant.

Before the defendant can be convicted of the crime charged in the indictment you must be satisfied from the evidence beyond a reasonable doubt that the said defendant did on the 5th day of June, 1917, know that he was over the age of 31 years of age and that knowing said fact that he willfully failed to register; therefore if you believe from the evidence that he did on said day have reason to believe, and did believe, that he was over the age of 31 years, or if you believe from the evidence that he was over the age of 31 years, then you must acquit him.

Before you can convict the defendant of the crime charged in the indictment you must not only believe that he had not attained the age of 31 years on the 5th day of June, 1917, but you must also believe from the evidence beyond a reasonable doubt that the said defendant on the said 5th day of June, 1917, knew or believed that he had not attained the age of 31 years, and that knowing said fact that he willfully failed to register for military service and to submit to registration as required by law.

The word "willful" implies an intent and purpose on the part of a person to do an act, and therefore I charge you that before the defendant can be convicted of the crime charged in the indictment you must believe from the evidence beyond a reasonable doubt that he was a person over the age of twenty-one years and who had not attained his thirty-first birthday on or prior to the 5th day of June, 1917, and that, fully knowing and understanding said facts and fully know-

ing and understanding that he was required to present himself for and submit to registration at the Los Nietos precinct, in Los Angeles county, California, on said 5th day of June, 1917, he did willfully fail and refuse so to do.

It is incumbent upon the government in this case not only to prove beyond a reasonable doubt that the defendant failed to present himself for and to submit to registration under the Act of Congress approved May 18, 1917, on June 5th, 1917, but the government must go further and prove beyond a reasonable doubt that the said defendant, knowing that he had not attained the age of 31 years on the 5th day of June, 1917, and knowing that he was required to submit himself for registration and to register pursuant to said Act of Congress at the Los Nietos precinct, in Los Angeles county, between 7 a. m. and 9 p. m. on said 5th day of June, 1917, did willfully fail to present himself for and submit to registration on June 5th, 1917.

(INSTRUCTIONS GIVEN BY COURT TO JURY.)

The court thereupon gave and read to the jury the instructions hereinafter immediately set forth:

The offense, gentlemen, with which this defendant is charged is that of wilfully failing and refusing to submit himself for registration under the act providing for the temporary increase of the military forces of the United States government, in that the said Edward Phelan, on June 5th, 1917, within this district, being a male person between the ages of twenty-one and thirty-one, to-wit,—he had attained his twenty-first

birthday, but who had not on that date, and had not before that, attained his thirty-first birthday, and as such person was then and there required by the proclamation of the President of the United States to present and submit himself for registration within the hours provided by law, did then and there unlawfully and wilfully fail and refuse to present himself for registration, and to submit to registration as in such act and in said proclamation provided, he then and there not being an officer or enlisted man of the regular army, and not being in any wise engaged in military service.

This indictment on file and which I have just read is, and is to be considered as, of course, a mere charge or accusation against the defendant, and is not, of itself, any evidence of the defendant's guilt, and no juror in this case should permit himself to be, to any extent, influenced against the defendant because or on account of such indictment on file. It is the duty of the jury to decide whether the defendant is guilty or not guilty of the offense charged after the consideration of all the evidence submitted in the case.

It is not for you to consider the penalty prescribed for the punishment of the offense at all. If you are aware of the penalty prescribed by law, it is your duty to disregard that knowledge; in other words, your sole duty, gentlemen, is to decide whether the defendant is guilty or not guilty of what he is charged with. The question of punishment is left wholly to the court, except as the law circumscribes its power.

You are instructed, gentlemen, that you are the exclusive judges of the credibility of the witnesses

whose testimony has been admitted in evidence herein, and of the effect and value of such evidence. Your power in this regard, however, is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

It is the province of the court, under the law, to state to you the rules of law applicable to the case, and you, in your deliberations, will be guided by those rules so stated.

It is your duty, unaided by the court, to pass upon and decide all questions of fact. Every witness is presumed to speak the truth, but this presumption may be repelled by the manner in which he or she testifies, by his or her appearance upon the stand, by the character of his or her testimony, or by the giving of false or perjured testimony by him or her, or by evidence affecting his or her character for truth, honesty or integrity, or by his or her motives, interest, or bias, or by contradictory evidence.

A witness may be impeached by the party against whom he or she was called, by contradictory evidence, by evidence that he or she has made, at other times, statements inconsistent with his or her present testimony, and by evidence that his or her general reputation for truth, honesty and integrity is bad.

If you believe that any witness has been impeached, or that the presumption of truthfulness attaching to the testimony of such witness has been repelled, then you are to give the testimony of such witness such credibility, if any, as you may think it entitled to. You are not bound to decide in conformity with the declarations of any number of witnesses which do not produce

conviction in your minds against a less number or against a presumption or other evidence satisfying your minds.

The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of this privilege and his testimony is to be treated like the testimony of any other witness,—that is, it is for you to say, remembering his testimony, his cross-examination, his demeanor and attitude on the witness stand, and during the trial, and everything else in the case, whether or not he told the truth. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far, or to what extent, if at all, it is worthy of credit.

If any witnesses are shown knowingly to have testified falsely on this trial, touching material matters here involved, the jury are at liberty to reject the whole or any part of their testimony.

In civil cases, gentlemen, the affirmative of the issue must be proven, and when that is contradicted the decision must be in accordance with the preponderance of the evidence; but in criminal cases guilt must be established beyond a reasonable doubt, and the burden of establishing such guilt rests upon the government. The law does not require of the defendant that he prove himself innocent, but the law requires the government to prove the defendant guilty in the manner and form as charged in the indictment beyond reasonable doubt, and unless the government has done so the jury should acquit.

Before a verdict of guilty can be rendered, each

member of the jury must be able to say, in answer to his own individual conscience, that he, in his mind, has arrived at a fixed opinion based upon the law and the evidence in the case, and upon nothing else, that the defendant here *is* guilty.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime; one is direct or positive testimony of an eye-witness to the commission of the crime, the other is testimony in proof of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, and which is known as circumstantial evidence. Such evidence may consist of admissions by the defendant, plans laid for the commission of the crime; in short, any acts, declarations, or circumstances admitted in evidence, tending to connect the defendant with the commission of the crime. Where the evidence is entirely circumstantial, yet is not only consistent with the guilt of the defendant, but inconsistent with any other rational conclusion, the law makes it the duty of the jury to convict.

The good character of a person accused of crime, when proven as a fact in the case, is a circumstance tending, in a greater or less degree, to establish his innocence. It must be considered in connection with all the other facts and circumstances of the case, and may be sufficient in itself to raise a reasonable doubt as to the defendant's guilt; but if, after a full consideration of the evidence adduced, the jury believes the defendant to be guilty of the crime charged, they

should so find, notwithstanding proof of good character.

The law presumes a defendant charged with crime innocent until proven guilty beyond a reasonable doubt. If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you are to do so, and, in that case, find the defendant not guilty.

You are further instructed that you cannot find the defendant guilty unless, from all the evidence, you believe him guilty, beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence, and if, after an impartial comparison and consideration of all the evidence, or from want of sufficient evidence on behalf of the government to convince you of the truth of the charge, you can candidly say you are not satisfied of the defendant's guilt, then you have a reasonable doubt, but if, after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you have no reasonable doubt. By such reasonable doubt you are not to understand that all doubt is to be excluded, for it is impossible in the determination of these questions to be absolutely certain. You are required to decide the question submitted to you upon the strong probabilities of the case, and in order to justify a conviction the probabilities must be so strong as, not to exclude all doubt or possibility of error, but as to exclude reasonable doubt.

When, weighing all the evidence, you have an abiding conviction and belief that the defendant is guilty, it is your duty to convict. No sympathy justifies you in seeking for doubt by any strained or unreasonable consideration or interpretation of the evidence or facts. The law of the United States, as declared by the Congress thereof, gentlemen, among other things, in the Act of Congress approved May 18th, 1917, provided for the temporary increase of the military forces of the United States occasioned because of war with Germany—

“That all male persons between the ages of twenty-one and thirty, both inclusive, shall be expected to register in accordance with regulations to be prescribed by the President, and upon a proclamation by the President or other public notice given by him or by his direction, stating the time and place of such registration, it shall be the duty of all persons of the designated ages, except officers and enlisted men of the regular army, or navy, and the national guard and naval militia within the boundaries of the United States, to present themselves for and submit to registration under the provisions of this act, and every such person shall be deemed to have notice of the requirements of this act upon the publication of said proclamation or other notice, as aforesaid, given by the President or by his direction, and any person who shall wilfully fail or refuse to present himself for registration or to submit himself thereto, as herein provided, shall be guilty of a misdemeanor.”

The question in this case, gentlemen, is, primarily,—what was the age of the defendant, Phelan, on regis-

tration day, June 5th, 1917? If, on that day, he had attained his thirty-first birthday, then he was not liable to that draft, and not required to present himself for registration, and should be acquitted by you. If, however, you find and believe that the defendant, Phelan, was not thirty-one years of age on said registration day, that is, if he was born subsequently to June 5, 1886, and in good faith believed that he was born subsequent to that date, and you believe that he wilfully refused to register, then you should convict him. It might be that though he was, in truth and in fact, under thirty-one years, if he in good faith and with sufficient reason, believed himself to be over thirty-one years of age, in such event I charge you he could not be held wilfully to have neglected to register. The element of wilfulness in addition to the mere question of age as above referred to must be present in order to justify a conviction.

The word wilful implies an intent and purpose on the part of a person to do or not to do an act.

In this case the defendant admits that he knew that persons over twenty-one years of age—who had not attained their thirty-first birthdays,—were required to register, for he says that he took a person to the registration place for the purpose of registration. Now, if the defendant had not, in fact, reached his thirty-first birthday, and if, in fact, he knew or believed that he had not reached his thirty-first birthday, being over twenty-one years of age, the element of willfulness would be established.

This case, gentlemen, like all cases triable in courts of justice, should be determined by you upon the evi-

dence before you, and upon that alone, subject to the rules of law laid down for your guidance by the court, and no juror, acting conscientiously, can base his verdict upon any other consideration. In this connection you are instructed juries are empanel for the purpose of agreeing upon a verdict, if they can conscientiously do so. It is true that each juror must decide the matter for himself, yet he should do so only after the consideration of the case with his fellow jurors. He should not hesitate to sacrifice his views or opinions of the case when convinced that they are erroneous, even if in so doing he defer to the views or opinions of others.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

No. 1299 Criminal.

We, the jury in the above-entitled cause, find the defendant, Edward H. Phelan, guilty as charged in the indictment.

Los Angeles, California, October 19th, 1917.

JOHN F. SLAUGHTER,

Foreman.

*In the District Court of the United States, in and
for the Southern District of California, Southern
Division.*

No. 1299 Criminal.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

Motion for a New Trial.

Comes now Edward H. Phelan, and moves said Honorable Court to vacate and set aside the verdict of guilty herein rendered and recorded on the 19th day of October, 1917, and to grant said defendant a new trial herein, for the following reasons:

(1) That said verdict is contrary to law.

(2) That said verdict is contrary to the evidence.

(3) That the said court misdirected the said jury in matters of law.

(4) That the said court erred in refusing to give to the jury certain charges specifically asked for by the defendant, and which refusal said defendant at the time duly excepted.

(5) That the said court has erred in the decision of questions of law arising during the course of the trial.

(6) That the said court erred in admitting in evidence against objections of defendant Plaintiff's Exhibits marked, respectively, United States Exhibits 3, 4, 5 and 6, and each of them, and to which action of the court defendant duly excepted in each instance.

(7) That there were other errors of law appearing upon the trial prejudicial to the defendant.

(8) Misconduct on the part of counsel for the Government, which prevented defendant from having a fair and impartial trial, and to which defendant duly excepted.

(9) Misconduct on the part of counsel for the Government in calling the attention of the jury to the action of the counsel for the defendant throughout the proceedings of the trial in objecting to the admission in evidence of certain testimony, and which defendant's counsel succeeded in having excluded from evidence, and in his comments thereon, and which misconduct prevented defendant from having a fair and impartial trial, and to which defendant duly excepted.

The said motion will be made and based upon the minutes of the court, including the notes of the evidence taken by the judge who tried said cause, as well as all the evidence given and received in the case and transcribed by the reporter, and all proceedings in the case so transcribed, which also included the whole testimony in the case and all the rulings made therein and excepted to by the defendant, and the address of counsel for the Government to the jury, and the affidavit of R. T. Walters, filed herein, and all other proceedings, and also upon all the pleadings, proceedings, records, exhibits, instructions and papers on file in said action with the clerk in the clerk's office of said court.

Dated this 22nd day of October, 1917.

ISIDORE B. DOCKWEILER,

Attorney for Said Defendant.

(Endorsed): Filed Oct. 22, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy. Service of the within motion is hereby admitted this 22nd day of October, 1917. W. F. Palmer, Asst. U. S. Atty., attorney for plaintiff.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 1299 Criminal.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

Affidavit of R. T. Walters.

United States of America, State of California, County
of Los Angeles—ss.

R. T. Walters, being first duly sworn, deposes and says, that he is an attorney-at-law, duly licensed to practice in all the courts of the state of California and in the above entitled court; that he resides at the city of Whittier, in the county of Los Angeles, state of California, in the above named district; that he is not a party to or in any way interested in the above entitled action. That he was in the Federal Building at Los Angeles, California, wherein the court room in which the above entitled case was tried is located, on Friday afternoon, October 19th, 1917, and that after the jury had rendered their verdict in the above entitled action and were discharged, several of

the jurymen who had sat as jurymen on the trial of the above entitled case went down in the same elevator that this affiant did, and that the said case was discussed among said jurors and this affiant. That one of the said jurymen, whose name affiant does not now know, but whom affiant can identify, left said elevator in the said Federal Building with affiant and walked with affiant from the said Federal Building across Temple street to the southwest corner of Temple street and Spring street, on which corner the International Bank Building is located; that while going from the said Federal Building to the said corner and for a short time thereafter this affiant and the said jurymen discussed the above entitled case and that the said jurymen stated to this affiant, in substance, as follows, to-wit:

That Mr. Dockweiler, the attorney for the defendant, objected strenuously to the introduction of certain evidence offered by the Government; that he did not know why the evidence should not have gone in, unless it would have injured the defendant, and that that fact, as much as any evidence offered in the case, was the reason for his decision in finding the defendant guilty.

R. T. WALTERS.

Subscribed and sworn to before me this 22nd day of October, 1917.

D. A. HAMMOCK,
U. S. Commissioner.

(Endorsed): Filed October 22nd, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy. Service of the within affidavit is hereby admitted this 22nd

day of October, 1917. W. F. Palmer, Asst. U. S. Atty., attorney for plaintiff.

At a stated term, to-wit: the July Term, A. D. 1917, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Monday, the 22nd day of October, in the year of our Lord one thousand nine hundred and seventeen.

Present: The Honorable Oscar A. Trippet, District Judge.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

No. 1299 Criminal, S. D.

This cause coming on this day for the sentence of defendant, Gordon Lawson, Esq., and Wm. F. Palmer, Esq., Assistant U. S. attorneys, appearing as counsel for the United States; defendant being present on bail, with his counsel, Isidore B. Dockweiler, Esquire; and said counsel for defendant having moved the court for a continuance of this cause for sentence, and said motion for continuance having been argued, in support thereof, by Isidore B. Dockweiler, of counsel for defendant, and in opposition thereto by Wm. F. Palmer, Esq., assistant U. S. attorney, of counsel for the United States: It is by the court ordered that defendant's said motion for a continuance of this case be, and the same hereby is denied; and defendant's motion for a

new trial, and an affidavit in support thereof, having been filed in open court; and said motion for a new trial having been argued, in support thereof, by Isidore B. Dockweiler, Esq., of counsel for defendant, and in opposition thereto by Gordon Lawson, Esq., and Wm. F. Palmer, Esq., assistant U. S. attorneys, of counsel for the United States, and in support thereof in reply by Isidore B. Dockweiler, Esq., of counsel for defendant: It is ordered that the defendant's motion for a new trial herein be, and the same hereby is denied, to which ruling of the court, on motion of defendant and by direction of the court, exceptions are hereby entered on behalf of said defendant; and, on motion of Isidore B. Dockweiler, Esq., of counsel for defendant, it is ordered that said defendant be, and he hereby is granted ten (10) days within which to prepare, serve and file his proposed bill of exceptions herein; whereupon the court pronounces sentence upon said defendant for the offense of which he now stands convicted, namely, the offense of failure to register in violation of the Act of Congress of May 18th, 1917, and the proclamation of the President of the same date, as follows, to-wit: The judgment of the court is, that the defendant, Edward H. Phelan, be imprisoned for the term of twelve (12) months in the county jail of Los Angeles county, California, and that he thereupon be registered according to the provisions of said Act of Congress; whereupon, on motion of Isidore B. Dockweiler, Esq., of counsel for defendant, it is ordered that defendant be, and hereby is, granted ten days stay of execution of judgment herein, defendant in the meantime to remain at large on his present bail bond.

Said defendant now presents and serves this, his bill of exceptions, and asks that same be settled and allowed and duly certified as such.

ISIDORE B. DOCKWEILER,

Attorney for Said Defendant Edward H. Phelan.

Received copy of the foregoing bill of exceptions, this 1st day of November, 1917, and within the time allowed by law, and all orders extending the time therefor.

ROBERT O'CONNOR,

United States Attorney.

By CLYDE R. MOODY,

Assistant United States Attorney.

It is hereby stipulated that the foregoing shall constitute the bill of exceptions of and in the above entitled cause, and that the same may be settled, allowed and ordered to be filed herein by the Honorable Oscar A. Trippet, who is the judge who tried the said cause, or, by reason of his absence from the state of California, by the Honorable Benjamin F. Bledsoe, United States district judge; and no objection shall at any time hereafter be made or urged because said bill has been signed, settled, allowed or ordered to be filed herein by said Honorable Benjamin F. Bledsoe, judge aforesaid, and in case any objection shall hereafter be made upon any of the aforesaid grounds, or otherwise or at all, then said bill of exceptions shall be settled, allowed and ordered to be filed herein by the said Honorable Oscar A. Trippet, district judge as afore-

said, whenever required so to do by counsel representing defendant.

Dated November 10th, 1917.

ROBERT O'CONNOR,

United States Attorney,

CLYDE R. MOODY,

Assistant United States Attorney,

Attorneys for Plaintiff.

ISIDORE B. DOCKWEILER,

Attorney for Defendant.

Order Settling Bill of Exceptions.

And now, in pursuance of justice and that right may be done, the defendant Edward H. Phelan tenders and presents the foregoing bill of exceptions, containing all of the evidence offered and introduced at the trial of said cause, and the instructions requested by the defendant to be given to the jury, with the defendant's exceptions, the refusal of the court to give each and every one of the same, and the instructions of the court to the jury, and containing all of the proceedings on the trial of said cause, to and including the verdict of the jury and the proceedings on defendant's motion for a new trial, and containing all of the exceptions taken by said defendant throughout said trial, and prays that same may be settled, allowed and signed and sealed by the court and made a part of the record, and the same is hereby accordingly done, and said bill of exceptions is hereby ordered to be filed this 17th day of November, 1917.

BENJAMIN F. BLEDSOE,

United States District Judge in and for the Southern
District of California, Southern Division.

[Endorsed]: Original. No. 1299 Criminal. Dept. In the District Court of the United States, for the Southern District of California, Southern Division. The United States of America, plaintiff, vs. Edward H. Phelan, defendant. Bill of Exceptions on Behalf of Defendant Edward H. Phelan. Filed Nov. 17, 1917. Wm. M. Van Dyke, clerk; Chas. N. Williams, deputy. Isidore B. Dockweiler, suite 502 Douglas Bldg., office Tel., Main 1320 (Sunset), Home 1320, Los Angeles, Cal., attorney for defendant. Removed to 1035 I. N. Van Nuys Bldg.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

No. 1299 Criminal.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

Petition for Writ of Error.

Your petitioner, Edward H. Phelan, defendant in the above entitled cause, brings this petition for writ of error to the District Court of the United States, in and for the Southern District of California, Southern Division, and in that behalf, your petitioner says:

That on the 19th day of October, 1917, the jury in the above entitled cause found your petitioner, Edward H. Phelan, guilty as charged in the indictment, and that thereafter and on the 22nd day of October, 1917, there was made, given, rendered and entered in the

above entitled court and cause, judgment against your petitioner, wherein and whereby your petitioner Edward H. Phelan was sentenced to be imprisoned for twelve months in the county jail of the county of Los Angeles, and that he thereupon be registered according to the provisions of the act of Congress adopted and enacted May 18th, 1917; and your petitioner says that he is advised by counsel and he avers that there was and is manifest error in the records and proceedings had in such cause and in the making, giving and rendering of such judgment and sentence to the great injury and damage of your petitioner, all of which errors will be more fully made to appear by the examination of the said records, and by examination of the bill of exceptions by your petitioner to be rendered and filed and in the assignment of errors hereinafter set out and to that end thereafter that the said judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals, Ninth Circuit, your petitioner now prays that a writ of error may be issued, directed therefrom to the said District Court of the United States for the Southern District of California, Southern Division, returnable according to law and the practice of the court and that there may be directed to be returned pursuant thereto a true copy of the record, bill of exceptions, assignment of errors and all proceedings had in said cause that the same may be removed into the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has happened, may be duly corrected and full and speedy justice done your petitioner.

And your petitioner now makes the assignment of errors filed herewith upon which he will rely and which will be made to appear by return of said record in obedience to said writ.

Wherefore, your petitioner prays the issuance of the writ as herein prayed, and prays that the assignment of errors filed herewith may be considered as his assignment of errors upon the writ, and that the judgment rendered in this cause may be reversed and held for naught and that said cause be remanded for further proceedings and that he be awarded a supersedeas upon said judgment and all necessary processes, including bail.

EDWARD H. PHELAN,

Petitioner.

ISIDORE B. DOCKWEILER,

Attorney for Said Petitioner Edward H. Phelan.

[Endorsed]: Original. No. 1299 Criminal. Dept. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. Edward H. Phelan, defendant. Service of the within petition for writ of error is hereby admitted this second day of November, 1917. Gordon Lawson, asst. U. S. attorney, attorneys for plaintiff. Filed Nov. 2, 1917. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Isidore B. Dockweiler, suit 536 Douglas Bldg., office tel., Main 8756, Home 1320, Los Angeles, Cal., attorney for defendant. Removed to 1035 I. N. Van Nuys Bldg.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

No. 1299 Criminal.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

Assignment of Errors.

Edward H. Phelan, defendant in the above entitled cause and plaintiff in error herein, having petitioned for an order from said court permitting him to procure a writ of error from the Circuit Court of Appeals, Ninth Circuit, directed to the District Court of the United States for the Southern District of California, Southern Division, from the judgment and sentence made and entered in said cause against said plaintiff in error, and petitioner herein now makes and files with his said petition the following assignment of errors herein, which he avers occurred on the trial of said cause and upon which he will rely for a reversal of said judgment and sentence upon the said writ, and which said errors, and each and every one of them, are to the great detriment, injury and prejudice of the said defendant and in violation of the *of the* rights conferred upon him by law; and he says that in the records and proceedings in the above entitled cause upon the hearing and determination thereof in the District Court of the United States for the Southern District of California, Southern Division, there is manifest error in this, to-wit:

I.

The court erred in allowing Father Patrick Harnett to answer the following questions propounded by Mr. Lawson and the court, on behalf of the plaintiff, over and against defendant's objections, and in refusing to sustain defendant's objections to each of them, to which action of the court defendant duly excepted:

(a)

Q. What are the facts that the priest is required to record?

Mr. Dockweiler: I want to object to the question upon the ground it is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

The Court: Read the statement.

(Last statement read by the reporter as follows: "He is obliged to record the date of the baptism, the name of the child baptized, the names of the parents of the child—")

The Witness (continuing): The date of birth, the date of birth of the child, and the names of the sponsors.

(b)

Q. By the Court: Now what date was the child baptized?

Mr. Dockweiler: Now, just one minute. Now, pardon me, Your Honor, I want to get in an objection. We object to that question upon the ground that the same is incompetent, irrelevant and immaterial. As the defendant contends, it is wholly immaterial to

the issues in this case as to when the defendant was baptized in the Roman Catholic church.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

The Court: Answer the question, Father Harnett.

A. I baptized the child on the 8th of August, 1886.

(c)

Q. By the Court: Where?

Mr. Dockweiler: The same objection. The same ruling, I assume?

The Witness: I am not quite certain as to where the child was baptized, but I assume it was baptized in Los Nietos.

(d)

Q. By Mr. Lawson: What is the teaching, Father Harnett, in the Catholic church in regard to infants dying before baptism?

Mr. Dockweiler: We object to that as incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

A. The teaching of the Catholic church with regard to the death, or with regard to the salvation of infants who die without baptism is that no one, no child who is unbaptized and dies before it attains the use of reason can enter into the Kingdom of Heaven.

(e)

Q. Was there a practice in your church that was known to these parents, concerning when the children should be baptized?

Mr. Dockweiler: Now, we object to that question upon the ground that it is incompetent, irrelevant and

immaterial, and upon the ground that it assumes that the Monsignor knew what was in the minds of the parents of the child.

The Court: I will overrule the objection.

Mr. Dockweiler: Exception.

A. I don't know.

II.

The court erred in allowing Father Patrick Harnett to testify on behalf of the plaintiff, over and against defendant's objections and refusing to sustain defendant's objections to questions propounded to him when being questioned as to the date he baptized the defendant and as to the teachings of the Catholic church, in regard to infants dying before baptism, and also concerning when children should be baptized, to which action of the court defendant duly excepted.

III.

The court erred in refusing to grant the motion of the defendant to strike out the answer of the witness Haribet J. Rechsteiner to the following questions propounded to him on behalf of the plaintiff, when testifying in reference to United States Exhibit No. 1, and in refusing to sustain the defendant's objections thereto, to which action of the court defendant duly excepted.

(a)

Q. Do you remember whether or not he stated at that time he signed this application?

A. Yes.

(b)

Q. He admitted signing it, did he?

A. He admitted signing it; yes, sir.

Mr. Dockweiler: I move to strike out the answer with a view to enabling me to note an objection.

The Court: You can move to have it stricken out on the ground that you object to the question.

Mr. Dockweiler: I object to the question upon the ground that the same is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled. The motion is denied.

Mr. Dockweiler: I note an exception.

IV.

The court erred in allowing the witness Mrs. Mary Isbell, called on behalf of the plaintiff, to testify in response to questions propounded on behalf of the plaintiff, over and against the defendant's objections, as to whether or not Mrs. Phelan was confined with the defendant, at the same time she was confined with her daughter, Rexie Dale, and as to what she thought concerning whether her daughter, Rexie Dale, was older than the defendant, to which action of the court defendant duly excepted.

V.

The court erred in allowing the witness Mrs. Mary Isbell to answer the following questions, propounded to the witness Mrs. Isbell by Mr. Lawson on behalf of the plaintiff, over and against the defendant's objections, to which action of the court defendant duly excepted:

(a)

Q. Mrs. Isbell, do you know whether or not Mrs. Phelan was confined at about the same time you were confined with your daughter, Rexie Dale?

Mr. Dockweiler: One moment. We object to that question as leading and suggestive; incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

A. I said that I didn't remember.

(b)

Q. Do you know, Mrs. Isbell, whether or not at the time you were confined with your daughter, Rexie Dale, whether at that time or after—whether the defendant was born after that time, when you were confined with your daughter, Rexie Dale?

Mr. Dockweiler: We object to the question.

A. I couldn't say.

(c)

Q. But just according to your best recollection. Do you remember whether or not at that time Mrs. Phelan was confined with the defendant at the same time when you were confined with your daughter, Rexie Dale?

Mr. Dockweiler: We object to that question upon the ground that the question has already been put and answered.

The Court: The answer was stricken out. I will overrule it.

Mr. Dockweiler: Well, no, the second one was not.

The Court: Answer the question.

Q. By Mr. Lawson: According to your best recollection?

A. Well, I declare I couldn't say, because I don't know.

(d)

Q. Well, what is your memory of that occurrence?

Mr. Dockweiler: We object to that upon the ground that the same is incompetent, irrelevant and immaterial, and it has already been testified to by the witness that she did not know.

The Court: The objection will be overruled. Read the question to the witness.

Mr. Dockweiler: Exception.

A. Well, I thought mine was the oldest. Of course, I couldn't say positively.

VI.

The court erred in allowing the witness Susie Daven to answer the following questions propounded to her by Mr. Lawson, on behalf of the plaintiff, over and against the defendant's objection, and in refusing to sustain the defendant's objection thereto, to which action of the court defendant duly excepted:

(a)

Q. When you were on the ranch, at that time, just before you left this year, did you or did you not hear the defendant make any statement as to whether or not he would register?

Mr. Dockweiler: We object to that upon the ground that the same is incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

Mr. Dockweiler: I note an exception.

Mr. Dockweiler: We do not deny that we did not register, Your Honor.

The Witness: He said he would not register because he was not going to be killed for any other nation, and

he would disguise himself and go out into the mountains, either of Arizona or Nevada.

VII.

The court erred in allowing the witness Frank Daven to answer the following question propounded by Mr. Lawson on behalf of the plaintiff, and in refusing to sustain defendant's objection thereto; to which action of the court defendant duly excepted:

Q. Now, what did the defendant say at that time?

Mr. Dockweiler: We object to that question upon the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Dockweiler: Exception.

A. Mr. Phelan says—he says he never got to register; he don't want to get killed going to fight for France and England—

The Court: Just a minute. The reporter can't understand you. Start again.

A. Mr. Phelan says he don't want to get to register because he don't want to get killed for France and England.

The Court: Now, start in here and go slower.

A. He says he don't want to get killed for France and England, and then go to war. He let his whiskers grow and get away up in the mountains, up in Nevada some place, and the board couldn't find him.

VIII.

The court erred in allowing the witness Susie Daven to testify over and against the defendant's objection, in regard to the alleged conversation that took place at her home on the Phelan ranch in the early part of May, 1916, between the defendant and herself,

husband and daughter, and also in allowing her to testify as to what the defendant said on said occasion, to which action of the court defendant duly excepted.

IX.

The court erred in allowing the witness Frank Daven to testify in response to questions propounded on behalf of plaintiff, over and against defendant's objections, as to the alleged conversation that took place at his home on the Phelan ranch on the first Sunday in May, between the defendant, the witness and his wife and daughter, or any of them, and also in allowing the witness to state what the defendant said on that occasion.

X.

The court erred in sustaining the objection made by Mr. Lawson, on behalf of the plaintiff, to the following questions propounded to the witness Frank Daven by Mr. Dockweiler on cross-examination, and in refusing to allow said witness to answer each and all of said questions, to which action of the court defendant duly excepted.

(a)

Q. By Mr. Dockweiler: Isn't it a fact that your wife became quite unfriendly to the defendant Phelan, because of some advice Mr. Phelan gave to you, and some assistance he gave to you immediately following the departure of your wife from the ranch?

(b)

Q. By Mr. Dockweiler: Did your wife ever express to you any feeling of hostility regarding Edward Phelan because of some assistance that Edward Phelan

rendered you, following the departure of your wife from the ranch?

(c)

Q. By Mr. Dockweiler: About the time that you left the ranch, did you have any conversation with the defendant Edward Phelan—respecting your wife and her departure?

(d)

Q. By Mr. Dockweiler: Did he ever do anything to you to make you feel unkindly toward him?

(e)

Q. By Mr. Dockweiler: Well, what did Dan do around there?

(f)

Q. By Mr. Dockweiler: Did Dan ever come around and talk to you, his brother?

(g)

Q. By Mr. Dockweiler: Did Peterson come around and talk to you while there?

(h)

Q. By Mr. Dockweiler: Did Edna ever talk to you on the ranch at any time while you were employed there?

(i)

Q. By Mr. Dockweiler: What, if anything, did Edna Phelan tell you about this case?

XI.

The court erred in sustaining plaintiff's objection to the following questions propounded to the defendant by Mr. Dockweiler, and in refusing to allow said defendant to answer each and every one of said ques-

tions while testifying in his own behalf, to which action of the court defendant duly excepted:

(a)

Q. By Mr. Dockweiler: Mr. Phelan, with reference to the Davens, what, if anything, occurred near or about the first part of May in connection with Mrs. Daven and your relationship with Mrs. Daven in reference thereto?

(b)

Q. By Mr. Dockweiler: Mr. Phelan, was there any other instance in your family of a brother for years observing a birthday in one month erroneously?

XII.

The court erred in refusing to allow the defendant Edward Henry Phelan to testify and give evidence tending to show that the relations between the defendant and the witnesses Mrs. and Mr. Daven were unfriendly, and also in refusing to allow the defendant to testify and give evidence that his brother, John Joseph Phelan, for five years regarded and observed July 22nd as his birthday, when, as a matter of fact, years afterward it was discovered or ascertained that June 22nd was his birthday, to which action of the court defendant duly excepted.

XIII.

The court erred in sustaining the plaintiff's objection to each and every one of the following questions propounded to the witness Mary Phelan by Mr. Dockweiler and also in refusing to allow her to answer each and everyone of said questions, to which action of the court defendant duly excepted:

(a)

Q. Do you know whether John Joseph Phelan had for any period of time regarded July 22nd as his birthday—instead of his real birthday, June 22nd?

(b)

Q. Do you know whether your son, John Joseph Phelan, for any period of time had mistakenly regarded a certain day as a birthday?

XIV.

The court erred in allowing Claya Taylor, called on behalf of the plaintiff, to answer the following questions propounded to her in reference to a carbon copy of a telegram, and in reference to a letter, over and against defendant's objections, and in refusing to sustain defendant's objections to said questions; and each of said questions, to which action of the court defendant duly excepted:

(a)

Q. Can you identify that telegram, Miss Taylor, as having been sent from the office of the United States attorney?

Mr. Dockweiler: We object to that question upon the ground that it is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: No foundation laid for it. Exception.

A. I recognize it as a carbon copy of a telegram sent from the office.

(b)

Q. Can you identify this letter, Miss Taylor, as

having been received in the office of the United States attorney?

Mr. Dockweiler: Yes. We object to that question on the ground that the same is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Dockweiler: And leading and suggestive.

The Court: Overruled. Now, you may answer the question.

A. I do recognize it; yes.

XV.

The court erred in overruling the objections made by Mr. Dockweiler, on behalf of the defendant, to the following questions propounded to the witness Mary Phelan while on cross-examination, while being questioned in reference to United States Exhibits Nos. 3 and 4, and also in allowing her to answer said questions, and each of them, over defendant's objections, to which action of the court defendant duly excepted: (a)

The Court: Well, you may ask her if it is a photographic copy of her handwriting?

Q. By Mr. Lawson: Is that a photographic copy of your handwriting?

A. I don't remember—

Mr. Dockweiler: Now, Mrs. Phelan, one minute. We object to the question as incompetent, irrelevant and immaterial and not proper cross-examination, and assumes a fact not proven.

The Court: The objection will be overruled.

Mr. Dockweiler: Exception.

(b)

Q. By Mr. Lawson: Is that your handwriting?

A. I don't remember; I don't remember whether I wrote it.

The Court: That was not the question I gave your leave to ask.

(c)

Q. By Mr. Lawson: Is that a photographic copy of your handwriting?

A. I can't remember.

Mr. Dockweiler: One minute now. I renew my objection.

The Court: Well, the objection will be overruled to that.

Mr. Dockweiler: Exception.

XVI.

The court erred in admitting in evidence over and against the defendant's objection plaintiff's exhibits marked respectively United States Exhibits Nos. 1, 3, 4, 5, and 6, and each of said exhibits, to which action of the court defendant duly excepted; said Exhibit 1 being an application by defendant for associate membership in the order of the Knights of Columbus, which application contains a statement as to the date of defendant's birth; said Exhibit 3 being a deposition of Mary Phelan in case No. 411751, taken in connection with an application by said Mary Phelan for a pension, which deposition contains a statement as to the name and date of birth of defendant; said Exhibit 4 being three affidavits made by Mary Phelan, mother of defendant, in connection with three separate applications for a pension, each of which said affidavits

contains a statement as to the name and date of the birth of defendant; said exhibit also containing an affidavit of Mary Phelan and one Joaquin Bot, which affidavit contains a statement as to the name and date of birth of defendant; said Exhibit 5 being a telegram reading as follows:

"Western Union Telegram. Charge Government rate.
Los Angeles, California. 10-9-17.

Attorney General,
Washington, D. C.

Send to special examiner Uline Los Angeles original papers proving age and birth Edward Phelan in pension application by Mary Phelan include any other evidence in pension files papers identified telegram October 9th from Saltzgiber trial October sixteenth. Rush.

O'CONNOR, U. S. Atty."

and Exhibit 6 being a letter reading as follows:

"DEPARTMENT OF JUSTICE, RLD-LP

BUREAU OF INVESTIGATION,

Washington, October 10, 1917.

"John R. O'Connor, Esquire,
Assistant United States Attorney,
Los Angeles, California.

Dear Sir:

Referring to your telegram to me of today, I enclose herewith copy of the baptismal and death record of the Cathedral of St. Vibiana, relative to the baptism of Edward Henry Phelan, copy of a deposition made by Mary Phelan on November 10, 1909, in connection with her claim for pension as widow of Thomas Phelan, and copy of three applications for pension

made October 12, 1889, August 15, 1890, and May 12, 1908, by Mary Phelan, certified under the Act of August 24, 1912, 37 Statutes at Large, page 498, section 3.

The commissioner of pensions considered it impracticable to send the original papers. I believe, however, that the certified copies will serve your purpose equally well.

Very truly yours,

A. B. BIELASKI,

Chief."

(Enclosures) RLD"

XVII.

The court erred in allowing to be read in evidence, over defendant's objection, United States Exhibits Nos. 1, 3, 4, 5 and 6, and each of said exhibits, and also each, any and every part of each exhibit, to which action of the court defendant duly excepted.

XVIII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are instructed that you cannot presume, conjecture, guess or arrive at any conclusion as to the age of the defendant Edward H. Phelan from the mere fact that he was baptized on the 8th day of August, 1886." To which refusal of the court the defendant duly excepted.

XIX.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are instructed that the law presumes the defendant innocent of the crime charged in the indict-

ment and innocent of any crime whatsoever, and you are instructed that the presumption of innocence follows him throughout the trial in this case, and in your deliberations as to the guilt or innocence of this defendant, you must take into consideration said presumption of innocence as a matter of evidence." To which refusal of the court the defendant duly excepted.

XX.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are instructed that on June 4th, 1886, and at the time Thomas Phelan executed the declaration of homestead on the property near Whittier, where he was then residing, the law of the state of California did not require that he insert in such declaration of homestead the names of his children, the number of his children, or the ages of his children." To which refusal of the court the defendant duly excepted.

XXI.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are instructed that the law of the state of California has at no time required one declaring a homestead on property to insert in the declaration of homestead the names, ages or number of his children, or the dates of their birth." To which refusal of the court the defendant duly excepted.

XXII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"The court instructs the jury that the law did not require a declaration of homestead to set forth the

number of children, or their ages, possessed by the party making such declaration of homestead." To which refusal of the court the defendant duly excepted.

XXIII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"The law in a criminal case clothes the defendant with the presumption of innocence, and when proof tends to overthrow this presumption, and to fix upon the defendant the presumption of guilt, the latter is permitted to support the original presumption of innocence by proof of good character. Such good character, when proven, is a circumstance tending in a greater or lesser degree to establish his innocence. It is of value not only in doubtful cases, but also when the testimony tends very strongly to establish the guilt of the accused. When proven, it is a fact in the case, and it is not to be put aside by the jury in order to ascertain that the other facts and circumstances considered in themselves do not establish the defendant's guilt beyond a reasonable doubt, but such good character, if proven, should be considered by the jury in connection with all of the testimony in the case, and not independently thereof, and the guilt or innocence of the defendant determined from all the testimony in the case, and such good character, if proven, should be weighed as any other fact established, and may, if proven, in itself be sufficient to raise a reasonable doubt as to the defendant's guilt in the minds of the jury." To which refusal of the court the defendant duly excepted.

XXIV.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

“The law in a criminal case clothes the defendant with the presumption of innocence, and when proof tends to overthrow this presumption, and to fix upon the defendant the presumption of guilt the latter is permitted to support the original presumption of innocence by proof of good character. Such good character, when proven, is a circumstance tending in a greater or lesser degree to establish his innocence. It is of value not only in doubtful cases, but also when the testimony tends very strongly to establish the guilt of the accused. When proven, it is a fact in the case, and it is not to be put aside by the jury in order to ascertain that the other facts and circumstances considered in themselves do not establish the defendant’s guilt beyond a reasonable doubt, but such good character, if proven, should be considered by the jury in connection with all of the testimony in the case, and not independently thereof and the guilt or innocence of the defendant determined from all the testimony in the case, and such good character, if proven, should be weighed as any other fact established, and may, if proven, in itself be sufficient to raise a reasonable doubt as to the defendant’s guilt in the minds of the jury. If the jury find the evidence conflicting and doubtful as to the defendant’s guilt, the importance which the jury are authorized to give to the evidence of good character is thereby increased.

In connection with what I have said on this subject, you are further instructed that the evidence in this

case stands undisputed that the defendant is a person of good character and enjoys a reputation in the community where he lives for truth, honesty and veracity. In addition to the evidence offered upon the subject, it was conceded by the counsel for the Government that he is a person of good moral character and enjoys a good reputation in the community where he lives for truth, honesty and veracity." To which refusal of the court the defendant duly excepted.

XXV.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are instructed that if the defendant was over the age of 31 years on June 5th, 1917, or if he had reason to believe and did believe that he was over the age of 31 years on the said 5th day of June, 1917, you must acquit him." To which refusal of the court the defendant duly excepted.

XXVI.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You cannot convict the defendant of the crime charged in the indictment if you believe from the evidence that he had reason to believe or did believe that he was not required to present himself for and submit to registration under and pursuant to the Act of Congress of May 18th, 1917." To which refusal of the court the defendant duly excepted.

XXVII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are instructed that the indictment charges, in

substance, that Edward H. Phelan, being a person between the ages of twenty-one and thirty, to-wit, a person who had attained his twenty-first birthday and who had not attained his thirty-first birthday on the 5th day of June, 1917, and being a person required to register under and pursuant to the act of Congress approved May 18th, 1917, entitled "An Act to Authorize the President to Increase Temporarily the Military Establishment of the United States," unlawfully did wilfully fail and refuse to present himself at the registration place in Los Nietos precinct, Los Angeles county, between 7 a. m. and 9 p. m. on said 5th day of June, 1917, and to submit himself for registration as in said act provided; and in this respect I charge you that before you can convict the defendant of wilfully failing to present himself and submit to registration pursuant to said act of Congress, you must believe from the evidence beyond a reasonable doubt that the said defendant Edward H. Phelan had not attained his thirty-first birthday on the 5th day of June, 1917, and that he knew said fact and fully understood said fact, and that, knowing and understanding that he had not attained his thirty-first birthday, and knowing and understanding that he was required to register pursuant to said act of Congress, that he did wilfully fail and refuse to present himself for and submit to registration as provided by said act of Congress.

If, on the other hand, you believe from the evidence that the said Edward H. Phelan believed or had reason to believe that he had attained his thirty-first birthday on the said 5th day of June, 1917, and that he did not understand and believe that he was required to

register under and pursuant to said act of Congress on the said 5th day of June, 1917, then you must acquit him." To which refusal of the court the defendant duly excepted.

XXVIII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"If you believe from the evidence that the defendant, on and throughout the 5th day of June, 1917, had reason to believe and did believe that he arrived at the age of 31 years of age on the 13th day of March, 1917, and that he had reason to believe and did actually believe, on and throughout the 5th day of June, 1917, that he was over 31 years of age, then I instruct you that you must acquit him." To which refusal of the court the defendant duly excepted.

XXIX.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"I instruct you that the law presumes that the defendant in this case is innocent of the crime charged in the indictment, and that that presumption follows him throughout the trial, and in determining the innocence or guilt of defendant it is your duty to take into consideration the presumption of his innocence as a matter of evidence." To which refusal of the court the defendant duly excepted.

XXX.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"The fact that the defendant in this case has been indicted and crimes charged against him does not

raise any presumption in any way or manner whatsoever that he is guilty of the crime charged, or of any crime whatsoever, and in that regard you are instructed that the law presumes that the defendant is innocent of the crime charged in the indictment, and that said presumption follows him throughout the trial of this case." To which refusal of the court the defendant duly excepted.

XXXI.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"It is incumbent upon the Government to prove beyond a reasonable doubt that the defendant is guilty of the crime charged in the indictment, and if after you have weighed the evidence there is a reasonable doubt in your minds as to the guilt of the defendant, it is your duty to acquit him." To which refusal of the court the defendant duly excepted.

XXXII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"If, after weighing and considering the evidence according to the rules given you by the court for your guidance, there is any reasonable doubt in your minds as to whether the defendant is guilty or innocent of the crime charged in the indictment, it is your duty to render a verdict acquitting him of said crime." To which refusal of the court the defendant duly excepted.

XXXIII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You cannot convict the defendant of the crime

charged in the indictment unless you are convinced by the evidence beyond a reasonable doubt that he is guilty of such crime." To which refusal of the court the defendant duly excepted.

XXXIV.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction upon your minds against a less number or against a presumption or other evidence satisfying to your minds; and in this connection I instruct you that a witness false in one part of his or her testimony is to be distrusted in others." To which refusal of the court the defendant duly excepted.

XXXV.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are instructed that in determining the weight to be given to the testimony of a witness, you will take into consideration the intelligence of the witness, the witness' bias or prejudice, if any, his or her manner on the witness stand, his or her apparent fairness or want of fairness, his or her means of observation and knowledge, and all matters, facts and circumstances shown on the trial, including any evidence offered tending to impeach the reputation of the witness for truth and veracity in the neighborhood where he or she resides, bearing upon the question of the weight to be given to his or her testimony; and give to the testimony of each and every witness such weight as to you it may

seem fairly entitled to." To which refusal of the court the defendant duly excepted.

XXXVI.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are the sole judges of the weight of the evidence and the credibility of the witnesses, and in determining the same you may consider the interest, bias or prejudice of a witness, if any, and manner in which the witness testifies on the stand, his or her apparent fairness or want of fairness, his or her means of observation and knowledge, and all matters, facts and circumstances shown on the trial bearing upon the question of the weight to be given to his or her testimony." To which refusal of the court the defendant duly excepted.

XXXVII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"You are instructed that the indictment in this case charges that Edward H. Phelan on June 5th, 1917, was a male person between the ages of twenty-one and thirty; and in this respect I charge you that the undisputed evidence in this case shows that Edward H. Phelan was not a person between the ages of twenty-one and thirty on June 5th, 1917, but that he was over thirty years of age on June 5th, 1917, and you are therefore instructed and directed to return a verdict acquitting the defendant of the crime charged in the indictment." To which refusal of the court the defendant duly excepted.

XXXVIII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

“You are instructed that the Government has wholly failed to prove that the defendant is guilty of the crime charged in the indictment, and you are therefore instructed to return a verdict acquitting him.” To which refusal of the court the defendant duly excepted.

XXXIX.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

“You are instructed to return a verdict acquitting the defendant.” To which refusal of the court the defendant duly excepted.

XL.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

“Before the defendant can be convicted of the crime charged in the indictment you must be satisfied from the evidence beyond a reasonable doubt that the said defendant did on the 5th day of June, 1917, know that he was over the age of 31 years of age and that knowing said fact that he wilfully failed to register; therefore if you believe from the evidence that he did on said day have reason to believe and did believe that he was over the age of 31 years, or if you believe from the evidence that he was over the age of 31 years, then you must acquit him.” To which refusal of the court the defendant duly excepted.

XLI.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

“Before you can convict the defendant of the crime charged in the indictment you must not only believe that he had not attained the age of 31 years on the 5th day of June, 1917, but you must also believe from the evidence beyond a reasonable doubt that the said defendant on the said 5th day of June, 1917, knew or believed that he had not attained the age of 31 years, and that knowing said fact that he wilfully failed to register for military service and to submit to registration as required by law.” To which refusal of the court the defendant duly excepted.

XLII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

“The word “willful” implies an intent and purpose on the part of a person to do an act, and therefore I charge you that before the defendant can be convicted of the crime charged in the indictment, you must believe from the evidence beyond a reasonable doubt that he was a person over the age of twenty-one years and who had not attained his thirty-first birthday on or prior to the 5th day of June, 1917, and that, fully knowing and understanding said facts and fully knowing and understanding that he was required to present himself for and submit to registration at the Los Nietos precinct in Los Angeles county, California, on said 5th day of June, 1917, he did wilfully fail and refuse so to do.” To which refusal of the court the defendant duly excepted.

XLIII.

The court erred in refusing to instruct the jury, as requested by defendant, as follows, to-wit:

"It is incumbent upon the Government in this case not only to prove beyond a reasonable doubt that the defendant failed to present himself for and to submit to registration under the act of Congress approved May 18, 1917, on June 5th, 1917, but the Government must go further and prove beyond a reasonable doubt that the said defendant, knowing that he had not attained the age of 31 years on the 5th day of June, 1917, and knowing that he was required to submit himself for registration and to register pursuant to said act of Congress at the Los Nietos precinct in Los Angeles county, between 7 a. m. and 9 p. m. on said 5th day of June, 1917, did willfully fail to present himself for and submit to registration on June 5th, 1917." To which refusal of the court the defendant duly excepted.

XLIV.

That the court erred in failing to direct the jury to return a verdict acquitting the defendant of the crime charged in the indictment.

XLV.

That the court erred in allowing the case to go to the jury, because the evidence showed that the defendant was not guilty of the crime charged in the indictment, or any crime whatsoever.

XLVI.

That the court erred in allowing the case to go to the jury, because the plaintiff had wholly failed to

prove that the defendant was guilty of the crime charged in the indictment.

XLVII.

The plaintiff wholly failed to prove that the defendant was guilty of the crime charged in the indictment.

XLVIII.

The plaintiff wholly failed to prove that the defendant was guilty of any crime whatsoever.

XLIX.

That the court erred in overruling and denying defendant's motion for a new trial.

L.

That the court erred in making, giving and rendering judgment against the defendant on the indictment herein, for the reason that the verdict of the jury is against the law, in that the evidence failed to show that the defendant was guilty of the crime charged in the indictment, or any crime whatsoever.

LI.

That the court erred in pronouncing sentence against the defendant.

LII.

That the court erred in making, giving and rendering judgment against the defendant on the indictment herein, for the reason that the verdict of the jury is against the law, in that the evidence conclusively shows that the defendant was over thirty-one years of age on June 5th, 1917, and also in that it was not proven on the trial of said action that the defendant was not an officer or an enlisted man of the regular army, or of the navy, or of the national guard, or of

the naval militia, while in the service of the United States.

ISIDORE B. DOCKWEILER,
Attorney for Edward H. Phelan, Plaintiff in Error.
United States of America, Southern District of California, Southern Division—ss.

I hereby certify that the foregoing assignment of errors is made on behalf of the petitioner for a writ of error herein, and is, in my opinion, well taken, and the same now constitutes the assignment of errors upon the writ prayed for.

ISIDORE B. DOCKWEILER,
Attorney for Plaintiff in Error.

[Endorsed]: Original. No. 1299 Criminal. Dept. . .
In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. Edward H. Phelan, defendant. Assignment of Errors. Service of the within assignment of errors is hereby admitted this second day of November, 1917. Gordon Lawson, asst. U. S. attorney, attorneys for plaintiff. Filed Nov. 2, 1917. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Isidore B. Dockweiler, suite 536 Douglas Bldg., office tel. Main 8756, Home 1320, Los Angeles, Cal., attorney for defendant. Removed to 1035 I. N. Van Nuys Bldg.

*In the District Court of the United States for
the Southern District of California, Southern
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

No. 1299, Criminal.

**Order Allowing Writ of Error and Admitting De-
fendant to Bail.**

On this 2nd day of November, 1917, came the defendant, Edward H. Phelan, by his attorney, Isidore B. Dockweiler, and presented to the court his petition heretofore filed herein, praying for the allowance of a writ of error, and assignment of errors, intended to be urged by him, and praying also that a transcript of the records and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises:

On consideration whereof, it is ordered, that said petition be, and the same is hereby allowed and granted and that a writ of error be, and the same is hereby allowed in said cause, and returnable before the said United States Circuit Court of Appeals for the Ninth Judicial Circuit, on the thirty day of November, A. D. 1917, and that a transcript of the record and of all the proceedings and papers on which the judgment was made and entered in this cause shall be made and

transmitted to the United States Circuit Court of Appeals for the Ninth Judicial Circuit and said writ shall operate as a supersedeas and stay of execution.

And it appearing that the United States attorney has no objection, it is further ordered that the defendant Edward H. Phelan be admitted to bail pending said writ of error, in the sum of five thousand and no/100 dollars (\$5,000.00), conditioned as the law directs; and

It is hereby further ordered, that the undertaking now tendered by said defendant be and the same is hereby approved as the undertaking on writ of error herein and also as such bail bond.

Done this 2nd day of November, 1917.

BLEDSOE,
District Judge.

[Endorsed]: Original. No. 1299 Criminal. Dept. . . In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. Edward H. Phelan, defendant. Order Allowing Writ of Error and Admitting Defendant to Bail. Service of the within order is hereby admitted this second day of November, 1917. Gordon Lawson, asst. U. S. attorney, attorneys for plaintiff. Filed Nov. 2, 1917. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Isidore B. Dockweiler, suite 536 Douglas Bldg., office tel. Main 8756, Home 1320, Los Angeles, Cal., attorney for defendant. Removed to 1035 I. N. Van Nuys Bldg.

*In the District Court of the United States for
the Southern District of California, Southern
Division.*

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD H. PHELAN,

Defendant.

No. 1299, Criminal.

Praecipe for Transcript of Record.

To the Clerk of Said Court:

Sir: Please prepare the transcript on record upon writ of error in the above cause, containing the following:

1. Indictment.
2. Bench warrant.
3. Arraignment and plea of defendant.
4. Record of trial stating each day's proceedings.
5. Verdict of the jury.
6. Judgment of the court.
7. Motion for a new trial.
8. Affidavit of R. T. Walters on motion for new trial.
9. Order denying the same.
10. Clerk's certificate to judgment roll.
11. Petition for writ of error on behalf of defendant.
12. Assignments of error on behalf of defendant.
13. Writ of error.
14. Citation on writ of error.
15. Return thereto.

16. Order allowing writ of error and supersedeas.
17. Supersedeas bond of the defendant.
18. All orders extending time to file bill of exceptions.
19. Bill of exceptions.
20. Clerk's certificate to transcript of record.
21. All opinions of the court, made or rendered in connection with trial of the above matter.
22. All other papers and documents required by the Circuit Court of Appeals, Ninth Judicial District.

ISIDORE B. DOCKWEILER,

Attorney for Defendant.

[Endorsed]: Original. No. 1299 Criminal. Dept. . . In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. Edward H. Phelan, defendant. Praecipe for Transcript of Record. Service of the within praecipe is hereby admitted this second day of November, 1917. Gordon Lawson, asst. U. S. attorney, attorneys for plaintiff. Filed Nov. 2, 1917. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Isidore B. Dockweiler, suite 536 Douglas Bldg., office tel. main 8756, Home 1320, Los Angeles, Cal., attorney for defendant. Removed to 1035 I. N. Van Nuys Bldg.

*In the District Court of the United States for
the Southern District of California, Southern
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD H. PHELAN,

Defendant.

No. 1299, Criminal.

Supersedeas Bond.

Know all men by these presents: That we, Edward H. Phelan, of the city of Whittier, county of Los Angeles, state of California, as principal, and Mary Phelan of the city of Whittier, county of Los Angeles, state of California, and O. M. Souden, of the city of Los Angeles, county of Los Angeles, state of California, as sureties, are held and firmly bound to the United States of America in the full sum of five thousand dollars (\$5,000.00) lawful money of the United States, to be paid to the United States, and the further sum of three hundred dollars (\$300.00) lawful money of the United States, to be paid to the United States, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 1st day of November, 1917.

Whereas, lately at the term of the District Court of the United States for the Southern District of California, Southern Division, in the suit pending in the said court between the United States of America,

plaintiff, and Edward H. Phelan, defendant, judgment and sentence was given, made and rendered, and entered against the said Edward H. Phelan, defendant, and the said Edward H. Phelan, is about to apply for a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse said judgment and sentence, and a citation directed to the United States of America to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, pursuant to terms and at or within the time to be fixed in the said citation, which said citation shall be duly issued and served within the time provided by law; now, the condition of the above application is such that if upon the service of such writ and citation as aforesaid, the said Edward H. Phelan shall appear in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in the said court and prosecute his writ of error, and if the said Edward H. Phelan shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause and shall surrender himself in execution of such judgment and sentence, as said court may direct, if the judgment and sentence against him shall be affirmed; and if he shall appear for trial in the District Court of United States for the Southern District of California, Southern Division, on such day or days as may be appointed for the trial by said District Court, and abide by and obey all orders made by said court, provided judgment and sentence against him shall be reversed by the United States Circuit

Court of Appeals, then this obligation to be void: otherwise to remain in full force, virtue and effect.

EDWARD H. PHELAN,

Principal.

MARY PHELAN,

O. M. SOUDEN,

Sureties.

Southern District of California—ss.

Mary Phelan, being duly sworn, deposes and says: That she is a householder in said district and is worth the sum of five thousand three hundred dollars (\$5,300.00), exclusive of property exempt from execution and over and above all debts and liabilities.

MARY PHELAN.

Subscribed and sworn to before me this 1st day of November, 1917.

(Seal)

WM. M. VAN DYKE,

Clerk U. S. District Court, Southern District of California.

By CHAS. N. WILLIAMS, Deputy.

Southern District of California—ss.

O. M. Souden, being duly sworn, deposes and says: That he is a householder in said district, and is worth five thousand three hundred dollars (\$5,300.00), exclusive of property exempt from execution and over and above all debts and liabilities.

O. M. SOUDEN.

Subscribed and sworn to before me this 1st day of November, 1917.

(Seal)

WM. M. VAN DYKE,

Clerk U. S. District Court, Southern District of California.

By CHAS. N. WILLIAMS, Deputy.

Foregoing bond O. K. Gordon Lawson, asst. U. S. attorney.

The foregoing bond and sufficiency of the sureties thereto is hereby approved.

Dated November 2nd, 1917.

BLEDSOE,

District Judge.

[Endorsed]: Original. No. 1299 Criminal. Dept. . .
In the District Court of the United States for the
Southern District of California, Southern Division.
United States of America, plaintiff, vs. Edward H.
Phelan, defendant. Supersedeas Bond. Filed Nov. 2,
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Douglas Bldg., office tel. Main 1320 (Sunset), Home
1320, Los Angeles, Cal., attorney for defendant. Re-
moved to 1035 I. N. Van Nuys Bldg. 60
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